

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) CRIMINAL CASE NO. CCB-16-0267
DANTE BAILEY, et al.,)
Defendants.)
_____)

Monday, April 15, 2019
Courtroom 1A
Baltimore, Maryland

BEFORE: THE HONORABLE CATHERINE C. BLAKE, JUDGE
(AND A JURY)

VOLUME XV

For the Plaintiff:

Christina Hoffman, Esquire
Lauren Perry, Esquire
Assistant United States Attorneys

For the Defendant Dante Bailey:

Teresa Whalen, Esquire

Reported by:

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Federal Official Court Reporter
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1 For the Defendant Randy Banks:

2 Brian Sardelli, Esquire

3 For the Defendant Corloyd Anderson:

4 Elita Amato, Esquire

5
6 For the Defendant Jamal Lockley:

7 Harry Trainor, Esquire

8 For the Defendant Shakeen Davis:

9 Paul Hazlehurst, Esquire

10
11 For the Defendant Sydni Frazier:

12 Christopher Davis, Esquire

13
14 Also Present:

15 Special Agent Christian Aanonsen, ATF

~~MALCOLM LASHLEY - CROSS~~P R O C E E D I N G S

(Sealed hearing under separate cover.)

(10:46 a.m.)

THE COURT: Should we get the witness and the jury?

(Jury entered the courtroom at 10:48 a.m.)

THE COURT: All right.

THE CLERK: Mr. Lashley, you're still under oath. I need you to speak directly into the microphone.

THE WITNESS: Okay.

THE CLERK: Thank you.

MALCOLM LASHLEY, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN.

THE COURT: All right. Ladies and gentlemen, welcome back. And we're ready to continue.

Mr. Sardelli.

MR. SARDELLI: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SARDELLI:

Q. Good morning, sir.

A. Good morning.

Q. You've never met with me before; correct?

A. Right.

Q. You testified previously that you met with the Government on multiple occasions; correct?

A. Yes.

1 Q. In fact, I think you testified that you meet -- you met
2 with them recently before you testified on Thursday; correct?

3 A. Yes.

4 Q. Did you meet with them over the weekend?

5 A. No.

6 Q. And you also testified that you're hoping to reduce the
7 amount of time you may spend in prison; correct?

8 A. Yes.

9 Q. And you also testified that you've been dealing drugs
10 since about 2003 approximately; am I correct?

11 A. Yes.

12 Q. And that you're a member of the 5200 boys, but not an MMP
13 member; am I correct?

14 A. Yes.

15 Q. And that your brother is Melvin Lashley; correct?

16 A. Yes.

17 Q. Now, has your brother spent time in jail?

18 A. Yes.

19 Q. Specifically, has he spent time in jail in 2010 or 2011?

20 MS. PERRY: Objection.

21 THE COURT: Do you want to come up to the bench.

22 (Bench conference on the record:

23 THE COURT: Objection?

24 MS. PERRY: I just don't know that Mr. Lashley's
25 brother's time in prison or his criminal history is relevant to

1 the credibility of this particular witness.

2 **MR. SARDELLI:** It's not about credibility, Your Honor.
3 He testified that his brother and him did a drug deal with
4 Randy Banks in 2010 and 2011, and obviously where he was and if
5 he was in jail is very relevant to that point.

6 **THE COURT:** Okay. Go ahead.)

7 (Bench conference concluded.)

8 **BY MR. SARDELLI:**

9 **Q.** Let's focus you specifically on 2010 or 2011.

10 Do you remember if your brother was arrested or spent any
11 time in jail in 2010 or 2011?

12 **A.** I don't know if he spent time in jail. He might have
13 gotten locked up.

14 **Q.** So there was a time that he spent locked up in 2010 or
15 2011; am I correct?

16 **A.** I think so.

17 **Q.** Now, when it comes to your cooperation, did the Government
18 approach you or did you approach the Government about offering
19 your testimony?

20 **A.** I approached the Government.

21 **Q.** And about when was that?

22 **A.** I'm not sure what month, but sometime in 2017.

23 **Q.** And you approached them?

24 **A.** Yes.

25 **Q.** If I remember correctly from your testimony, you claim

1 that you were with your brother in 2010 or 2011 wherein he
2 bought a quarter from Randy Banks; am I correct?

3 A. Yes.

4 Q. And that's a quarter of cocaine; correct?

5 A. Yes.

6 Q. Do you remember meeting with the ATF agents and the
7 prosecutors about October 15th of last year?

8 A. Yes.

9 Q. Now, is a quarter and an eight ball the same thing?

10 A. No.

11 Q. They're different amounts; correct?

12 A. Yes.

13 Q. You testified on Thursday that it was a quarter; correct?

14 A. About a quarter ounce, yes.

15 Q. Do you remember telling the agents and the prosecutors in
16 that previous interview with them that it was an eight ball?

17 A. I can't remember.

18 Q. Well, you do remember the interview, though; correct?

19 A. Yes, I remember meetin' with them.

20 Q. October 15th, 2018?

21 A. Yes.

22 Q. And Agent Moore was there; Agent Aanonsen was there?

23 A. Yes.

24 Q. AUSA Hoffman and AUSA Perry were there?

25 A. Yes.

1 Q. And you don't remember them telling that you knew it was
2 an eight ball because your brother showed it to you when you
3 got back in the car? You don't remember telling them that?

4 A. It might was an eight ball. It might -- I guess -- I
5 thought it was a quarter.

6 Q. So are you not sure if it was a quarter or an eight ball?

7 A. I thought it was a quarter, quarter ounce.

8 Q. Would showing you a -- some information there refresh your
9 recollection?

10 A. Yes.

11 MR. SARDELLI: Your Honor, may I approach?

12 THE COURT: Okay.

13 BY MR. SARDELLI:

14 Q. (Hanging.)

15 Can you read that part right there to yourself.

16 A. (Reviews document.)

17 Q. Does that refresh your recollection?

18 A. Yes.

19 Q. So on Thursday it was a quarter; but when you talked to
20 them previously, it was an eight ball. Right?

21 A. Yes. I might have forgot.

22 Q. An eight ball is 3.5 grams, approximately; correct?

23 A. Yes.

24 Q. And a quarter is 7 grams; correct?

25 A. Yes.

1 Q. So one's twice the amount of the other; correct?

2 A. Yes.

3 Q. And this allegedly occurred in 2010 or 2011; am I correct?

4 A. Yes, about that.

5 Q. Do you remember if it was 2010 or 2011 or you don't
6 remember?

7 A. No. It was, I think, '10.

8 Q. Okay. Could it have been earlier than that?

9 A. No.

10 Q. Was it day or night?

11 A. It was daytime.

12 Q. Do you know the address of the house?

13 A. No, I don't.

14 Q. Do you know the color of the house?

15 A. No.

16 Q. Did you ever take the agents there?

17 A. No.

18 Q. Do you know a William Banks?

19 A. William Banks, I might not know him as that name. I might
20 know his street name.

21 Q. Trouble?

22 A. Yes.

23 Q. How about Jay Greer?

24 A. No.

25 Q. Champagne?

1 **A.** I know of him. I don't know him.

2 **Q.** Derran Hankins?

3 **A.** No.

4 **Q.** A Devin Ferguson?

5 **A.** No. I might know they street names. I don't actually
6 know they real names.

7 **Q.** But none of those names ring a bell to you at this point?

8 **A.** No.

9 **Q.** Besides Trouble, you mentioned?

10 **A.** Yes.

11 **Q.** Have you discussed this case with your brother?

12 **A.** No.

13 **Q.** Is it possible that you're misremembering and that you
14 weren't actually there in 2010, 2011; this is just something
15 your brother told you?

16 **A.** No. I was there.

17 **Q.** Now, going back to that report or the time you met with
18 the agents on October 15th, 2018, you didn't give any date for
19 this alleged deal with your brother and Randy Banks. There was
20 no date given; is that correct?

21 **A.** I really don't remember.

22 **Q.** Would it refresh your recollection to look at something
23 again?

24 **A.** Yes.

25 **MR. SARDELLI:** Your Honor, may I approach?

1 BY MR. SARDELLI:

2 Q. Go ahead and read that to yourself.

3 A. The whole thing?

4 Q. Yes.

5 A. (Reviews document.)

6 Q. Does that refresh your recollection?

7 A. Um, what was you asking me that I remember? I just read
8 the whole thing.

9 Q. You didn't ever mention the date when you mentioned -- met
10 with them in October of 2018, never mentioned the date 2010 or
11 2011, did you?

12 A. No. I don't think it was asked -- I don't think that was
13 asked.

14 Q. Okay. But you didn't mention that; correct?

15 A. No.

16 Q. When is the first time you mentioned the date 2010 or 2011
17 to the agents or the prosecutors?

18 A. Just Thursday, when I was here.

19 Q. That was the first time?

20 A. Yes, I think so.

21 Q. Before you testified on Thursday?

22 A. Yes.

23 Q. And you mentioned a conversation you had with my client at
24 CDF, am I correct, or a detention facility somewhere?

25 A. Yes.

1 Q. Okay. When is the first time you mentioned that to the
2 agents or the prosecutors?

3 A. I don't remember the date.

4 Q. Was the first time in October of 2018?

5 A. It might have been that time when I seen them.

6 Q. Okay. But you didn't mention the location or a time frame
7 until Thursday morning, did you?

8 A. Right.

9 Q. Now, let's talk about your plea agreement, specifically
10 the sealed supplement or the supplement to the plea agreement.

11 You're familiar with the supplement to your plea
12 agreement; am I correct?

13 A. Yes.

14 Q. There's the actual plea agreement and then there's an
15 attachment or a supplement; am I correct?

16 A. Yes.

17 Q. And you reviewed that?

18 A. Yes.

19 Q. With your attorney?

20 A. Yes.

21 Q. Would it help you to see a copy, or do you remember it
22 well?

23 A. I guess it would help me to see it again.

24 MR. SARDELLI: Your Honor, may I approach?

25 THE WITNESS: I don't remember everything word for

1 word.

2 **THE COURT:** Sure. This is -- you're showing him the
3 sealed supplement?

4 **MR. SARDELLI:** I'm showing him the sealed supplement,
5 Your Honor, it's specifically Paragraph 4 of the sealed
6 supplement.

7 **THE COURT:** All right.

8 **BY MR. SARDELLI:**

9 **Q.** Can you read the underlined part of Paragraph 4 (handing).

10 **A.** (Reviews document.)

11 **Q.** Just Paragraph 4.

12 **A.** Oh, okay.

13 **Q.** Does that help refresh your recollection?

14 **A.** Yes.

15 **Q.** And you've signed and agreed to this; am I correct?

16 **A.** Yes.

17 **Q.** Now, there is a line there that says, quote, The parties
18 understand that this office -- meaning the U.S. Attorney's
19 Office --

20 **MS. PERRY:** Objection.

21 **THE COURT:** I think she probably wants you to ask a
22 question first before you read him the document.

23 **MR. SARDELLI:** Okay.

24 **BY MR. SARDELLI:**

25 **Q.** Isn't it true that you're currently stuck at the mandatory

1 minimum of 120 months?

2 A. Can you say that again.

3 Q. Your understanding -- do you understand what a
4 mandatory-minimum sentence is?

5 A. Yes.

6 Q. And your current mandatory-minimum sentence is 120 months;
7 am I correct?

8 A. Yes.

9 Q. Okay. And in order to get below 120 months, the
10 Government has to file a motion to allow the Court (indicating)
11 to give you less than 120 months; am I correct?

12 A. Yes.

13 Q. And that's based on your testimony here today; am I
14 correct?

15 A. Yes.

16 Q. Now, let's talk about your actual plea agreement.

17 Specifically, do you remember an Attachment A to your plea
18 agreement that talked about the facts of your case?

19 A. Yes.

20 Q. Isn't it true that nowhere in Attachment A do you ever
21 mention Randy Banks?

22 A. Can you say that again.

23 Q. In your statement of facts when you pled guilty, nowhere
24 in Attachment A did you talk about Randy Banks; am I correct?

25 THE COURT: Could I see counsel at the bench, please.

~~MALCOLM LASHLEY - CROSS~~

(Bench conference on the record:

THE COURT: First of all, the question -- he did not write the statement of facts. The statement of facts does not have to cover everything that is going to be introduced at trial. If there is something inconsistent in the statement of facts about Mr. Banks, that is one thing. But --

MR. SARDELLI: Your Honor, may I?

THE COURT: Sure.

MR. SARDELLI: So nowhere in there -- he mentions numerous other people. And nowhere in there does he mention Randy Banks. I think that's a fair question for cross.

THE COURT: No. This is written by the Government. The Government can choose or not to include Mr. Banks in a statement of facts.

If there's something in here that is inconsistent, that would be different. If he admitted in the statement of facts, you know, that it was an eight ball instead of a quarter ounce, whatever, that would be fair impeachment for him.

But the fact that the Government chose not to put Mr. Banks into this statement of facts for the purposes of his admitting his own personal guilt is not fair cross-examination.

MR. SARDELLI: All right. I'll move on, Your Honor.

Thank you.)

(Bench conference concluded.)

BY MR. SARDELLI:

1 Q. So you explained to us what 120 months or 10 years means
2 to you; am I correct?

3 A. Can you say that again.

4 Q. So you testified earlier about what 120 months and the
5 mandatory minimum means in your case; correct?

6 A. Yes.

7 Q. What does the range of 57 to 71 mean to you?

8 MS. PERRY: Objection.

9 THE COURT: Sustained.

10 BY MR. SARDELLI:

11 Q. Let's talk about your institutional history. You said
12 you've been dealing drugs since 2003. Have you been locked up
13 before?

14 A. Yes.

15 Q. Let's go backwards.

16 From today, how long have you been locked up since today?
17 You're obviously in jail now. When -- you've been locked up
18 since when for this case?

19 A. June the 8th, 2017.

20 Q. Okay. And before then, were you also locked up for
21 significant periods or some periods?

22 A. Back in 2012, '11 and '12, a little bit of '11 and then
23 '12.

24 Q. Okay. What about 2013, '14, or '15?

25 A. I done, like, weekends before for traffic cases, but not

1 locked up.

2 Q. Okay. But you did spend time in 2011 in jail at some
3 point; correct?

4 A. Yes.

5 MR. SARDELLI: Your Honor, I have no further
6 questions.

7 THE COURT: All right. Thank you.
8 Mr. Trainor.

9 MR. TRAINOR: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. TRAINOR:

12 Q. Good morning, Mr. Lashley.

13 A. Good morning.

14 Q. I believe you testified on Thursday that you're 28 years
15 old now; is that correct?

16 A. Yes.

17 Q. And that you moved to the neighborhood of Windsor Mill and
18 Forest Park in Baltimore about 2002; correct?

19 A. Yes.

20 Q. So at that time you must have moved with your family;
21 correct?

22 A. Yes.

23 Q. And you must have been, what, 11, 12 years old?

24 A. 12.

25 Q. 12. And you started dealing drugs in 2003, you said?

1 A. Yes, in that area.

2 Q. All right. So you were 13 years old when you started
3 that?

4 A. Yes.

5 Q. All right. And you were on your own doing that; correct?

6 A. Yes.

7 Q. You weren't -- nobody was your boss or anything?

8 A. No.

9 Q. You were independent?

10 A. Yes.

11 Q. All right. And you had no choice about moving to that
12 neighborhood. That's where your family moved; correct?

13 A. Yes.

14 Q. And it turned out that sort of a central area of that
15 neighborhood is the 5200 block of Windsor Mill Road.

16 A. Yes.

17 Q. So the neighborhood itself is more or less referred to as
18 5200 or that -- is that how you referred to the neighborhood?

19 A. Yes.

20 Q. And you found over the years that there was a Bloods gang
21 that was operated -- operating in that neighborhood?

22 A. Yes.

23 Q. And unlike your brother Melvin, you made a decision not to
24 join that gang; right?

25 A. Yes.

~~MALCOLM LASHLEY - CROSS~~

1 Q. But you were still able to sell, independently sell your
2 drugs in the neighborhood; right?

3 A. Yes.

4 Q. And you obviously knew some people who were in that gang,
5 that Bloods gang; right?

6 A. Yes.

7 Q. And at some point, that gang started calling itself MMP or
8 Murdaland Mafia Piru?

9 A. Yes.

10 Q. All right. And even then you made the decision, even
11 though Melvin, your brother, had joined the gang and taken the
12 oath and was following all the rules and had the tattoos,
13 et cetera, that you just weren't going to join; right?

14 A. Yes.

15 Q. But in order to live in the neighborhood and be out on the
16 street selling drugs, you had to get along with members of MMP;
17 right?

18 A. Yes, I guess you can say that.

19 Q. And you did get along with them; right?

20 A. Yes.

21 Q. All right. Were you asked to join a gang?

22 A. No.

23 Q. And you didn't try to join a gang, did you?

24 A. No.

25 Q. And you could survive as an independent person hustling on

~~MALCOLM LASHLEY - CROSS~~

1 the street without any interference from the gang; right?

2 A. Yes.

3 Q. But there are other people who were more or less outsiders
4 who were not associated with the neighborhood who couldn't
5 operate in that neighborhood, could they?

6 A. Can you say it again.

7 Q. All right. There were -- you were able to operate as an
8 independent drug dealer in that neighborhood because you were
9 from the neighborhood and you knew people in the neighborhood;
10 correct?

11 A. Right.

12 Q. But somebody from the outside, let's say from another
13 neighborhood, could not come in and do what you were doing;
14 right?

15 A. Right.

16 Q. There would be trouble?

17 A. Yes.

18 Q. Some people paid a tax, didn't they?

19 A. I don't know about that.

20 Q. You just don't know about it?

21 A. I don't know if people was actually paying taxes.

22 Q. All right. By that I mean that they would -- if somebody
23 who was not from the neighborhood came in and wanted to sell
24 drugs there, they might be charged something by a member of a
25 gang; right?

1 A. Maybe.

2 Q. You don't know about that; am I right?

3 A. Yes.

4 Q. Now, you were able to operate as an independent drug
5 dealer up -- when you weren't in jail, right up until June 8th
6 of 2017; correct?

7 A. Yes.

8 Q. And at that point you got arrested; right?

9 A. Yes.

10 Q. And you had sold drugs directly to an undercover police
11 officer at least five or six times; am I right?

12 A. Yes.

13 Q. All right. But you did that on your own as an independent
14 drug dealer; right?

15 A. Right.

16 Q. Not working for anybody?

17 A. Yes.

18 Q. Now, I believe you testified last Thursday that you would
19 classify yourself as a 5200 boy; right?

20 A. Yes.

21 Q. And a 5200 boy was basically somebody from the
22 neighborhood; right?

23 A. Yes.

24 Q. And some of the 5200 boys -- not you -- some of the
25 5200 boys were members of this gang; right?

1 A. Yes.

2 Q. And others were not?

3 A. Yes.

4 Q. All right. As far as you know, Jamal Lockley was not a
5 member of that gang; right?

6 A. Right, that I know of, yes.

7 Q. Now, you knew Jamal Lockley because he was from that
8 neighborhood too; right?

9 A. Yes.

10 Q. And he had been around for a number of years in that
11 neighborhood?

12 A. Yes.

13 Q. And you knew -- you also knew Dwight Jenkins, Huggie;
14 right?

15 A. Yes.

16 Q. And you knew him pretty well; right?

17 A. You can say that.

18 Q. Yeah. You were asked to identify Jenkins' voice on a
19 series of phone calls, recordings of phone calls last Thursday.

20 Do you remember that?

21 A. I don't think it was Jenkins.

22 Q. It wasn't Jenkins? Excuse me.

23 Who was it?

24 A. I don't recall.

25 Q. Who was it that was complaining about the traffic incident

1 with Ricardo Johnson, that Ricardo --

2 **THE COURT:** Do you want to maybe consult for a second.

3 (Counsel conferred.)

4 **BY MR. TRAINOR:**

5 **Q.** Oh, that wasn't you who was doing that. She reminded me.

6 But Dwight Jenkins was a friend of Ricardo Johnson's,
7 wasn't he?

8 **A.** Yes, I guess so.

9 **Q.** All right. And you don't have any reason to believe that
10 Mr. Jenkins had anything to do with the murder of his friend,
11 do you?

12 **A.** No.

13 **Q.** Who -- you told us who in the neighborhood you mostly hung
14 out with. Could you remind us of who that was.

15 **A.** My brother, Reese, J-Rock, or Bill.

16 **Q.** Did you hang out with Sydni Frazier?

17 **A.** Sometimes.

18 **Q.** Not -- but not regularly?

19 **A.** I mean, whenever we was outside together, we was around
20 each other, but not all the time.

21 **Q.** All right. And you wouldn't see Mr. Lockley on a regular
22 basis being friendly with Sydni Frazier, would you?

23 **A.** Say it again.

24 **Q.** You wouldn't see Jamal Lockley on a regular basis being
25 friendly with Sydni Frazier, would you?

~~MALCOLM LASHLEY - CROSS~~

1 **A.** You said I wouldn't see him?

2 **Q.** Yeah. He didn't hang out with him, did he?

3 **A.** Not often.

4 **MR. TRAINOR:** No further questions. Thank you.

5 **THE COURT:** All right. Thank you.

6 Ms. Amato.

7 CROSS-EXAMINATION

8 **BY MS. AMATO:**

9 **Q.** Good morning.

10 **A.** Good morning.

11 **Q.** Mr. Lashley, I represent Mr. Anderson, who you've
12 identified as Bo.

13 **A.** Yes.

14 **Q.** You would consider yourself a pretty good drug dealer;
15 right?

16 **A.** Do I consider myself?

17 **Q.** Yeah. I mean --

18 **A.** A pretty good drug dealer?

19 **Q.** Yeah.

20 **A.** I guess so.

21 **Q.** Yeah. I mean, you've been out selling since you were 13;
22 correct?

23 **A.** Yes.

24 **Q.** And back in 24 [sic] and 2015, you were basically out
25 selling every day.

1 **A.** Yes.

2 **Q.** During the periods that you were on the street.

3 **A.** Yes.

4 **Q.** Because you were also locked up a lot during that time
5 period as well.

6 **A.** You say 2004?

7 **Q.** 2014, 2015.

8 **A.** No. I was pretty much home 2014.

9 **Q.** You weren't in Baltimore Central Booking and intake
10 between April and September?

11 **A.** 2014?

12 **Q.** Right.

13 **A.** Um.

14 **Q.** Anyway, I mean, the point is that you were out -- when you
15 were out on the street, you were out selling every day; right?

16 **A.** Yes.

17 **Q.** And in 2014 through 2016, you were selling out in the
18 Forest Park and Windsor Mill area. That was your area every
19 day?

20 **A.** Yes.

21 **Q.** And you made a lot -- you made good money; right?

22 **A.** I guess so.

23 **Q.** And that was how -- drug dealing was how you made your
24 money?

25 **A.** Yes.

~~MALCOLM LASHLEY - CROSS~~

1 Q. Which is why you continued to sell drugs even after you
2 picked up a drug charge?

3 A. Yes.

4 Q. You had your customers --

5 A. Yes.

6 Q. -- regular customers?

7 A. Yes.

8 Q. And you would communicate with these customers through
9 text messaging?

10 A. Yes.

11 Q. You would even advertise to your customers. You would
12 tell them when good stuff -- when you felt you had good stuff;
13 right?

14 A. Yes.

15 Q. And so you always wanted to have a ready supply so that
16 you could make your money.

17 A. Would you say that again.

18 Q. You always wanted to have a regular supply of drugs so you
19 could make your money?

20 A. Yes.

21 Q. 'Cause if you weren't selling drugs, you weren't making
22 money.

23 A. Yes.

24 Q. So when you told us that you were asked who you would go
25 to for your drugs, you said whoever was offering to you.

~~MALCOLM LASHLEY - CROSS~~

1 A. Whoever I could buy some from.

2 Q. Well, whoever was offering to you; right?

3 A. I wouldn't say whoever was offering to me.

4 Q. Got it. Well, that's what you told us yesterday. You
5 were asked about who was supplying you, and you said from
6 whoever was offering you.

7 A. I had a -- selected people I would deal with.

8 Q. All right. Well, one of those was Spittle; right?

9 A. Yes.

10 Q. And Spittle was MMP.

11 A. Yes.

12 Q. And when he offered to you, you would buy from him or you
13 would -- actually, you wouldn't buy from him. He would front
14 you; right?

15 A. I didn't -- he wouldn't have to offer it to me. I would
16 just buy 'em.

17 Q. Okay. He wouldn't have to offer it to you. But when he
18 did, you wouldn't say "no"; right?

19 A. I don't think he ever had to offer me any drugs. I would
20 just buy 'em -- call him or buy 'em.

21 Q. 'Cause you were always running to him.

22 A. Sometimes if I need 'em.

23 Q. And another person that you would run to was Reese.

24 A. Yes.

25 Q. And when Reese would offer to you, you would buy from him

~~MALCOLM LASHLEY - CROSS~~

1 too.

2 **A.** Basically, he wouldn't have to offer it to me. I would
3 just call him up and buy it.

4 **Q.** You would call up and buy it. All right.

5 And he would front you.

6 **A.** No. I would buy it.

7 **Q.** All right. Well, you would -- you would front. You would
8 get drugs fronted to you as well, wouldn't you?

9 **A.** No.

10 **Q.** No? All right.

11 **MS. AMATO:** Court's indulgence.

12 **BY MS. AMATO:**

13 **Q.** Prior to your entering a guilty plea in this case, you met
14 with Government counsel; remember that?

15 **A.** Yes.

16 **Q.** All right. You sat down with them. Your attorney was
17 present. And you met with them because you wanted to see if
18 you could cooperate.

19 **A.** Yes.

20 **Q.** And, of course, you wanted to cooperate because you saw
21 and you knew that there was a lot of evidence against you;
22 right?

23 **A.** Yes, you can say that.

24 **Q.** Right. Well, I mean, they had controlled sales that you
25 made to law enforcement; correct?

1 A. Yes.

2 Q. Six -- at least six of them; right?

3 A. Yes.

4 Q. They had text messages in which you were advertising your
5 sales; right?

6 A. Yes.

7 Q. All right. So -- and on September 28th of 2018, the first
8 time you met with them, you were asked about whether you
9 received drugs from Pollock. And you informed law enforcement
10 and prosecution that you would usually get it fronted, although
11 sometimes you would pay up front.

12 A. Yes.

13 Q. All right. So you admit that you got fronted from
14 Pollock?

15 A. Maybe once, but that's not how it always went.

16 Q. All right. Well, it doesn't say once here.

17 But you're saying now once?

18 A. Can I see what you . . .

19 Q. Certainly.

20 MS. AMATO: Your Honor, may I approach?

21 THE COURT: Yes.

22 (Counsel conferred.)

23 BY MS. AMATO:

24 Q. Paragraph 4, first line (indicating).

25 A. (Reviews document.)

~~MALCOLM LASHLEY - CROSS~~

1 Yes.

2 Q. All right. So you see it says that -- I mean, you told
3 them that you would usually get fronted by Pollock, not once.
4 Usually -- you would usually get it fronted to you.

5 A. If he was -- if he -- maybe once. Maybe once, but
6 that's -- I usually buy what I sell.

7 I don't know if that's saying all the time --

8 Q. How many times -- how many times did you get from Pollock?

9 A. Quite a few times.

10 Q. All right. Well, you agree with me that what you told
11 law enforcement at that time and the prosecutors was that you
12 would usually get it fronted.

13 A. Right.

14 Q. All right. Now, according to you, Mr. Anderson approached
15 you?

16 A. Yes.

17 Q. And you're telling us that when he approached you, that
18 you -- supposedly, he approached you, you believed, to sell you
19 drugs; correct?

20 A. Yes.

21 Q. And you told us on Thursday that he would say something
22 like: He would just ask me if I was all right or if I need
23 anything.

24 A. Right.

25 Q. Now, again, when you met with prosecutors a second time,

~~MALCOLM LASHLEY - CROSS~~

1 the day that -- well, let me say it this way: The day that you
2 took your plea, do you remember that day when you took your
3 plea in this case? When you came to court and you --

4 A. Yes.

5 Q. -- went before the judge and you pled guilty?

6 A. Yes.

7 Q. And that same day you met with the prosecution again.

8 A. Yes.

9 Q. And on that day, the prosecution asked you to tell them
10 what you knew about Mr. Anderson.

11 A. Right.

12 Q. And at that time you told them that he would -- he had
13 come to you to say and to ask you or basically to say that you
14 needed to get with him; do you remember that?

15 A. Yes.

16 Q. All right. So you never told law enforcement or the
17 prosecution anything about these words: He would just ask me
18 if I was all right or if I need anything.

19 A. I mean, it pretty much mean the same thing --

20 Q. Well --

21 A. -- street-wise.

22 Q. -- those are different words; you would agree with me?

23 A. Exactly. But if he asked me to get with him, that's
24 basically asking me, like, do I need anything or --

25 Q. All right. Well, that's your interpretation. I mean, you

~~MALCOLM LASHLEY - CROSS~~

1 never got anything from him, did you?

2 A. No.

3 Q. So you don't know what he was saying to you.

4 A. I mean, I knew what he meant.

5 Q. Well, you never got anything from him.

6 A. Never got anything.

7 Q. I mean, those words "you needed [sic] to get with me"
8 could mean a lot of different things.

9 A. It could.

10 Q. It could mean: You need to get with me to buy a car from
11 me; right?

12 A. It could.

13 Q. I mean, you know that Mr. Anderson used to sell cars;
14 right?

15 A. Yes.

16 Q. You knew that he had -- he would go to car auctions, and
17 he would purchase cars and he would sell cars?

18 A. I guess so.

19 Q. Well, you knew that; right?

20 A. Yes.

21 Q. Okay. So when he said "you needed to get with me," it
22 could have meant to get a car from him.

23 A. I guess so, yes.

24 Q. And it also could have meant -- I mean, you knew that he
25 used to rap now and then; right?

~~MALCOLM LASHLEY - CROSS~~

1 **A.** I never known him to rap.

2 **Q.** Okay. What about play -- playing cards; do you know him
3 to play cards?

4 **A.** Who?

5 **Q.** Cards, cards, you know, cards (indicating)?

6 **A.** No, I don't know him to do that either.

7 **Q.** All right. Now, Mr. Lashley, when you were out there
8 selling your drugs, did you carry a gun?

9 **A.** No.

10 **Q.** No. All right. But you -- you told us that you saw
11 Mr. Anderson with a gun one time.

12 **A.** Yes.

13 **Q.** All right. And you don't remember the year?

14 **A.** No. It was a few years back.

15 **Q.** All right. You don't know the time of year.

16 **A.** No, I don't remember that.

17 **Q.** You don't remember -- you said it was on his hip or in his
18 dip?

19 **A.** On his hip.

20 **Q.** On his hip.

21 Do you remember which hip it was?

22 **A.** No.

23 **Q.** And do you know what kind of gun it was?

24 **A.** No.

25 **Q.** You would agree with me that your memory's pretty murky

1 with that.

2 A. What you mean by "murky"?

3 Q. Well, you don't know that -- you don't remember much about
4 it, do you?

5 A. I just remember seeing him with a gun.

6 Q. I see.

7 And when you say you remember seeing him with a gun, was
8 he -- he was walking around?

9 A. No. We was standin' outside.

10 Q. I see.

11 And he -- and you could actually see the gun?

12 A. You could see it on his hip.

13 Q. I see.

14 You could see it on his hip. Okay. But you don't
15 remember which hip it was?

16 A. It was years ago, like I said.

17 Q. And he certainly didn't pull it out.

18 A. No. I think that day he did pull it out.

19 Q. Oh, he did pull it out?

20 A. Yes.

21 Q. So you could see it?

22 A. Yes.

23 Q. I see.

24 And what year, again, was that?

25 A. I don't recall.

~~MALCOLM LASHLEY - CROSS~~

1 **MS. AMATO:** Your Honor, I have no further questions.

2 **THE COURT:** All right. Thank you.

3 Mr. Hazlehurst.

4 **MR. HAZLEHURST:** Thank you, Your Honor.

5 CROSS-EXAMINATION

6 **BY MR. HAZLEHURST:**

7 **Q.** Good morning, Mr. Lashley.

8 **A.** Good morning.

9 **Q.** My name's Paul Hazlehurst. I represent Shakeen Davis, who
10 is sittin' back here (indicating).

11 Now, you testified last Thursday that you believe your job
12 at testifying is simply to tell the truth; correct?

13 **A.** Yes.

14 **Q.** And it ultimately would be up to the judge to determine
15 whether you could potentially get a reduction in your sentence;
16 isn't that right?

17 **A.** Yes.

18 **Q.** But -- and you've been asked questions by several counsel
19 now. I think Mr. Sardelli talked to you about your plea
20 agreement in this case, didn't he?

21 **A.** Who?

22 **Q.** This gentleman right here (indicating) wearing the blue
23 tie.

24 Do you see him?

25 **A.** Yes.

~~MALCOLM LASHLEY - CROSS~~

1 Q. And he asked you some questions about your plea agreement
2 in this case, didn't he?

3 A. Yes.

4 Q. And he showed you that plea agreement, didn't he?

5 A. Yes.

6 Q. And he pointed out to you, and I believe he talked about
7 this, that one -- you pleaded guilty to two different counts, a
8 racketeering conspiracy; right?

9 A. Yes.

10 Q. And a drug conspiracy?

11 A. Yes.

12 Q. And as to the drug conspiracy, you are facing a
13 mandatory-minimum sentence of 10 years; correct?

14 A. Yes.

15 MS. PERRY: Objection; asked and answered.

16 THE COURT: I'm assuming this is going somewhere new.

17 MR. HAZLEHURST: I am, Your Honor.

18 BY MR. HAZLEHURST:

19 Q. And that -- basically, that means you cannot get less than
20 10 years unless something happens; right?

21 A. Yes.

22 Q. And that ultimately, you are seeking something called a
23 reduction -- basically, a reduction in your sentence; correct?

24 A. You say I'm doing what?

25 Q. You're going to be asking for a reduction in your

~~MALCOLM LASHLEY - CROSS~~

1 sentence; correct?

2 A. Yes.

3 Q. Okay. And that's got to be based on your cooperation;
4 correct?

5 A. Yes.

6 Q. Your substantial assistance; right?

7 A. Right.

8 Q. Okay. And the people who ultimately will determine
9 whether you cooperated or substantially assisted are Government
10 counsel; correct?

11 A. Say that again.

12 Q. The people who are going to make that determination
13 whether you have cooperated, whether you have provided
14 substantial assistance, are sittin' at this table (indicating);
15 right?

16 A. Well, I thought it was the judge that do that.

17 Q. Well, I want to make sure I understand this and the ladies
18 and gentlemen of the jury understand this, that when you are --
19 you're cooperating; correct?

20 A. Yes.

21 Q. Okay. And you're not cooperating with any of the people
22 who are seated at these tables (indicating); right?

23 A. You say I'm not cooperating with 'em?

24 Q. Right. You're not providing substantial assistance to
25 anybody seated over here (indicating), are you? You're not

1 trying to help them (indicating), are you?

2 A. No.

3 Q. You're trying to help them (indicating); correct?

4 A. Yes.

5 Q. Okay. And only if these people (indicating) determine
6 that you have provided assistance can then a motion be made to
7 the judge to reduce your sentence.

8 MS. PERRY: Objection; asked and answered.

9 THE COURT: Overruled.

10 BY MR. HAZLEHURST:

11 Q. Do you understand the question?

12 A. Yes.

13 Q. It's up to these people (indicating) to make a motion to
14 the judge, and only then does the judge have the power to give
15 you a sentence below 10 years; correct?

16 A. Yes.

17 Q. Okay. Now, so that means it's extremely important for you
18 to try and help these people (indicating); right?

19 A. Say that again.

20 Q. It's extremely important for you to try and help these
21 people (indicating); right?

22 A. Yes.

23 Q. You're going to do absolutely your best to provide them as
24 much information as you can; right?

25 A. Yes.

~~MALCOLM LASHLEY - CROSS~~

1 Q. All right. Now, you have never previously sat in a chair
2 like this in regards to this case and raised your right hand
3 and sworn an oath to tell the truth; right?

4 A. You say I didn't?

5 Q. You've never been on the witness stand before in relation
6 to this case; right?

7 A. Just Thursday.

8 Q. Okay. In this case, never anytime before that.

9 Never appeared before the grand jury; right?

10 A. No.

11 Q. Okay. But there were times where you previously met with
12 Government counsel, Ms. Hoffman (indicating) and Ms. Perry
13 (indicating); right?

14 A. Yes.

15 Q. Agent Aanonsen; right?

16 A. Yes.

17 Q. Okay. Your attorney, who's sittin' right in the courtroom
18 right there, he was there too, wasn't he?

19 A. Yes.

20 Q. And there was one other agent. There was Agent Moore;
21 correct?

22 A. I don't remember his name.

23 Q. Does he have red hair?

24 A. Yes.

25 Q. White man?

~~MALCOLM LASHLEY - CROSS~~

1 A. Yes.

2 Q. Okay. And you met with them on September 28th of 2018;
3 right?

4 A. Yes.

5 Q. And you met with them on October 15th of 2018; correct?

6 A. Yes.

7 Q. Okay. And when you met with them, they didn't put you on
8 camera. There was no videotape; right?

9 A. Right.

10 Q. They weren't recording you with audiotape, were they?

11 A. No.

12 Q. But people were taking notes; right?

13 A. Yes.

14 Q. The agents were taking notes. They were writing things
15 down; right?

16 A. Yes.

17 Q. You weren't taking notes, were you?

18 A. No.

19 Q. And when you met with these people, you had plenty of time
20 to tell them everything you knew, didn't you?

21 A. Yes.

22 Q. And if you said something they didn't understand, I'm sure
23 they asked you to clarify that; right?

24 A. Yes.

25 Q. Okay. And if they didn't hear something that you said,

1 I'm sure they would ask you to repeat it; right?

2 A. Yes.

3 Q. And, again, you had every incentive when you met with
4 these people to provide as much information and as exact
5 information as you could, couldn't you?

6 A. Yes.

7 Q. Okay. Now, you've talked about a lot of people while
8 you've been sitting in that chair, but you also talked about a
9 lot of people when you were in those meetings; right?

10 A. Yes.

11 Q. A lot of different names.

12 And one of those names was Shakeen Davis (indicating);
13 right?

14 A. Yes.

15 Q. Okay. And you talked in particular about an incident on
16 May 30th of 2015; right?

17 A. Yes.

18 Q. Okay. Where you allege that Mr. Davis shot into a car;
19 right?

20 A. Yes.

21 Q. Okay. And Thursday was not the first day you talked about
22 that; right?

23 A. No.

24 Q. Okay. You talked about that back in September of 2018,
25 didn't you?

1 **A.** Yes.

2 **Q.** Okay. And it was during that time when you were meeting
3 with the agents and you were meeting with the attorneys and
4 they were taking notes; correct?

5 **A.** Yes.

6 **Q.** And when you talked to them, you couldn't initially
7 remember what year that incident had occurred, could you?

8 **A.** No, I don't think so.

9 **Q.** And when you talked to them, you told them that you had
10 witnessed this while standing out across the street from the BP
11 gas station with a girl; correct?

12 **A.** Yes.

13 **Q.** Now, you didn't mention that there was a girl when you
14 testified on Thursday, did you?

15 **A.** You say I did what?

16 **Q.** You did not mention that there was a girl present when you
17 testified on Thursday, did you?

18 **A.** Yes. It wasn't asked.

19 **Q.** Okay. When you met with the agents, you said there was a
20 girl. Did you give the name of that person to the agents?

21 **A.** I don't think so.

22 **Q.** Okay. You didn't provide address?

23 **A.** No.

24 **Q.** Didn't provide a name?

25 **A.** No.

~~MALCOLM LASHLEY - CROSS~~

1 Q. Didn't provide a contact number?

2 A. No.

3 Q. But that stuff would have been important because that
4 would have been yet another witness to this incident; correct?

5 A. Right. It wasn't asked who the girl was I was with.

6 Q. Okay. Okay. And you didn't volunteer that information,
7 did you?

8 A. No.

9 Q. Okay. Now, again, you said you were out there that day.
10 You didn't also talk to any police officers that day, did you?

11 A. No.

12 Q. Okay. You didn't go up and say to anybody, "Hey, I just
13 saw this," did you?

14 A. No.

15 Q. Didn't provide any information to anybody that day, did
16 you?

17 A. No.

18 Q. Okay. Now, you also mentioned when you were testifying
19 that you had discussions with someone named Kane after this
20 occurred; correct?

21 A. Yes.

22 Q. Okay. But you never mentioned talking to anybody named
23 Kane when you were talkin' to the agents back in September of
24 2018, did you?

25 A. No. It wasn't -- it wasn't asked who I was with or

1 talkin' to.

2 Q. Okay. But, again, your job in these meetings, right, was
3 to provide as much information as you could; right?

4 A. Right.

5 Q. As accurate and as complete and as truthful as you could;
6 right?

7 A. Yes.

8 Q. Because ultimately, that's your ticket to gettin' home, if
9 not right away, at least sooner; right?

10 A. I guess.

11 Q. Now, you were also asked in particular about something
12 that occurred on September 1st, 2016.

13 Do you remember that? And I'm talking about when you
14 testified on Thursday.

15 A. You said I was asked what?

16 Q. About an incident that occurred on September 1st of 2016.

17 Do you remember?

18 A. I'm not -- I don't remember the dates like that.

19 Q. Okay. Let me see if I can help you with that.

20 So there was a telephone call that you were asked to
21 review.

22 Do you remember that?

23 A. Yes.

24 Q. Okay. And there was a reference to a term "blicky."

25 Do you remember that?

1 A. Yes.

2 Q. Okay. And the blicky you interpreted for the ladies and
3 gentlemen of the jury as being in relation -- basically terming
4 it a firearm; correct?

5 A. Yes.

6 Q. Okay. And you said that on that date, Shakeen Davis had
7 gone into a Laundromat; right?

8 A. Yes.

9 Q. And Shakeen Davis had deposited a firearm somewhere in
10 that Laundromat; correct?

11 A. Yes.

12 Q. And that ultimately that firearm had been discovered, I
13 guess, by the police; correct?

14 A. I don't know if the police got it. I know it just came up
15 missin'.

16 Q. Okay. But, again, you said on Thursday that you had
17 witnessed something that appeared to be a criminal act by
18 Mr. Davis (indicating); correct?

19 A. Which one? The handgun or the shootin'?

20 Q. The handgun.

21 A. Yes.

22 Q. At the Laundromat.

23 A. Yes.

24 Q. But, again, either on September 28th, 2015, or on that
25 second date in October of 2018, you never mentioned, said

~~MALCOLM LASHLEY - CROSS~~

1 anything about Shakeen Davis having a gun in a Laundromat, did
2 you?

3 **A.** Maybe it was brought up before and not that day, but . . .

4 **Q.** But not that day. Didn't say anything that was to these
5 agents (indicating), to these attorneys (indicating) about
6 that, did you?

7 **A.** I don't really remember.

8 **Q.** Okay. Don't remember. It was some time ago. Right.

9 **MR. HAZLEHURST:** No further questions, Your Honor.
10 Thank you.

11 **THE COURT:** Thank you.

12 Mr. Davis.

13 **MR. DAVIS:** Briefly, Your Honor.

14 CROSS-EXAMINATION

15 **BY MR. DAVIS:**

16 **Q.** Mr. Lashley, on direct examination and on
17 cross-examination with some of the other attorneys, you
18 indicated that you have been selling drugs since you were age
19 12 or 13; correct?

20 **A.** Yes.

21 **Q.** And you're now 28 years old; correct?

22 **A.** Yes.

23 **Q.** Now, at what age did you leave school?

24 **A.** I'd say 16.

25 **Q.** So you were selling drugs while you were in school, then?

1 **A.** Yes.

2 **Q.** And during that time period, were you also using drugs?

3 **A.** No.

4 **Q.** During any of this time period that you were selling
5 drugs, were you a drug user?

6 **A.** Marijuana. That's it.

7 **Q.** Now, your brother is Malcolm Lashley; correct?

8 **A.** No. I'm Malcolm.

9 **Q.** Oh, that's true.

10 Your brother, Melvin, is --

11 **A.** Yes.

12 **Q.** -- Lashley, is that your older brother or is that your
13 younger brother?

14 **A.** Older.

15 **Q.** And he goes by the nickname Menace; correct?

16 **A.** Yes.

17 **Q.** Did he get you involved with drug trafficking?

18 **A.** No.

19 **Q.** Not indirectly through his connections?

20 **A.** No.

21 **Q.** You did this completely on your own?

22 **A.** Yes.

23 **Q.** Now, with respect to Sydni Frazier, he does not appear in
24 your contacts from your cell phone?

25 **A.** He what?

1 Q. He's not in your contacts on your cell phone,
2 Sydni Frazier.

3 A. My phone, before I got locked up?

4 Q. Yes.

5 A. (No response.)

6 Q. And you're not in his contacts from his phone.

7 A. (No response.)

8 Q. Did you review any phone records showing that your phone
9 communicated with Sydni Frazier's phone over the past 16 years
10 when you were meeting with the authorities?

11 A. No.

12 Q. Would you describe Sydni Frazier as a casual acquaintance?

13 A. A who?

14 Q. A casual acquaintance, not a good friend; just someone you
15 would see off and on out on the street.

16 A. Yes.

17 Q. So you weren't terribly close to him; correct?

18 A. You could say that.

19 Q. And you said over the past 15 to 16 years, you could count
20 on one hand the number of times you dealt with him.

21 A. Yes.

22 Q. Now, today and on Thursday, this is the first time that
23 you've actually provided sworn testimony under oath; correct?

24 A. Yes.

25 Q. You were arrested in June of 2017; correct?

1 A. Yes.

2 Q. You pled guilty in September of 2018; correct?

3 A. Yes.

4 Q. That same day, you went in and met with the authorities
5 and spoke to them for several hours; correct?

6 A. Yes.

7 Q. And then you met with them one other time a few weeks
8 later and spoke with them for several hours; correct?

9 A. Yes.

10 Q. Now, during these meetings that you had with the
11 authorities, you were shown pictures; correct?

12 A. Yes.

13 Q. You were shown pictures of a house on Bennett Place,
14 961 Bennett Place; correct?

15 A. Yes.

16 Q. Were you told what was found in that house?

17 A. No.

18 Q. Were you shown any CCTV video footage -- you know, the
19 street cams. You know what I'm talking about; right?

20 A. No.

21 Q. You know how there are cameras in the city on different
22 streets?

23 A. Yeah, I know what you talkin' about. I know what you
24 talkin' about, the cameras.

25 Q. Did you view any video footage of you down on

1 Bennett Place at any time when you met with the authorities?

2 A. I don't remember.

3 Q. Do you even remember when you were on Bennett Place?

4 A. I been there a few times.

5 Q. Well, okay. We're talking over a 15- to 16-year period.

6 Do you remember the year that you were down on
7 Bennett Place?

8 A. 2016.

9 Q. Do you remember the month?

10 A. No.

11 Q. Do you remember if it was cold? Do you remember if it was
12 warm?

13 A. No.

14 Q. Do you remember the day of the week?

15 A. I don't remember the day of the week that I was down
16 there, no.

17 Q. Do you remember the time? Was it dark or was it light?

18 A. Daytime.

19 Q. And you testified you saw Sydni Frazier go into a house on
20 Bennett Place; correct?

21 A. Yes.

22 Q. Could you describe what you observed.

23 A. Just him going into the house.

24 Q. Okay. Well, give us a little more detail.

25 What did you actually observe?

~~MALCOLM LASHLEY - CROSS~~

1 **A.** I was meetin' him that day, one day, and he would go in
2 the house and come back out.

3 **Q.** Now, how did he get into the house?

4 **A.** I guess the door was unlocked.

5 **Q.** Well, you guess. I mean, I'm not asking you to guess.
6 I'm asking you to go based on your recollection.

7 You're telling us that this was sometime in 2016; correct?

8 **A.** Yes.

9 **Q.** Okay. Tell us what you remember.

10 **A.** I just said, I met with him and he went in the house and
11 came back out. I don't know how he got in, if he had a key or
12 was it unlocked. I don't know.

13 **Q.** Now, you had never been to that house again, had you?

14 **A.** I would wait out front in the car. I been there a couple
15 times.

16 **Q.** Have you been into this house?

17 **A.** No.

18 **Q.** Can you -- have you ever seen anyone else in this house?

19 **A.** No.

20 **Q.** Is this house occupied?

21 **A.** What you mean by somebody lived there?

22 **Q.** Yes.

23 **A.** I thought it was a vacant house.

24 **Q.** I'm going to direct your attention to Uncle Rick,
25 Ricardo Johnson.

~~MALCOLM LASHLEY - CROSS~~

1 You testified that he was a flashy individual.

2 **A.** Yes.

3 **Q.** When you say "flashy," do you mean always had money or
4 jewelry or nice clothes --

5 **A.** Yes.

6 **Q.** -- nice cars?

7 **A.** Yes.

8 **Q.** And Rick had enemies; correct?

9 **A.** I'm guessin'.

10 **Q.** Well, when you met with the authorities, you told 'em that
11 he had a big dispute going on with Dominic Dillard.

12 Do you remember telling them that?

13 **A.** With who?

14 **Q.** Dominic Dillard.

15 **A.** I don't know who that is.

16 **Q.** Would anything refresh your recollection? Perhaps a copy
17 of the report from the proffer session that was held with you
18 on October 15th?

19 **A.** Yes.

20 (Counsel conferred.)

21 **BY MR. DAVIS:**

22 **Q.** Well, actually, before I show you this, do you know
23 someone by the name of Nick?

24 **A.** Yes.

25 **Q.** And you were aware that Nick had a dispute going on with

~~MALCOLM LASHLEY - CROSS~~

1 Ricardo Johnson; correct?

2 A. Yes.

3 Q. And you're also aware that someone had shot
4 Ricardo Johnson not too long before he was killed.

5 A. Say that again.

6 Q. You were also aware that someone had shot at him before he
7 had been killed.

8 A. Yes.

9 Q. So he had some enemies out there, didn't he?

10 A. Yes, you could say that.

11 Q. Now, Dwight Jenkins, Huggie, that's how you met Rick;
12 correct?

13 A. Yes.

14 Q. And you testified that they were friends; correct?

15 A. Yes.

16 Q. Were you aware or did you have any knowledge of Huggie
17 having problems with Ricardo Johnson in July of 2016?

18 A. No.

19 Q. Now, Huggie's MMP like your brother Menace; correct?

20 A. Yes.

21 Q. Let me direct your attention to --

22 MR. DAVIS: And, Madam Clerk, if I could have the
23 HDMI.

24 BY MR. DAVIS:

25 Q. Let me direct your attention to government exhibit -- I'm

1 going to shrink this down so that we can see the exhibit
2 number.

3 I guess I'm not going to be able to shrink it down.

4 **THE COURT:** It's one of the maps.

5 **BY MR. DAVIS:**

6 **Q.** This is MAP-34, Government's Exhibit MAP-34.

7 If you could take a look at this. Do you have a -- you
8 don't have a screen -- you do have a screen up there?

9 **A.** Yes.

10 **Q.** Is that map showing up there?

11 **A.** Yes.

12 **Q.** Now, you testified you saw a chase involving -- you
13 testified it was Sydni Frazier on a dirt bike; correct?

14 **A.** Yes.

15 **Q.** Did this chase --

16 **A.** Well, I didn't see the chase.

17 **Q.** You didn't?

18 **A.** No.

19 **Q.** But you saw Sydni Frazier at some point in time when he
20 was on a dirt bike; correct?

21 **A.** Yes.

22 **Q.** And do you remember when that was?

23 **A.** When?

24 **Q.** Yes.

25 **A.** I don't remember the month or time of day.

1 Q. Was it warm? Was it cold?

2 A. It was warm.

3 Q. Was it light out, or was it dark out?

4 A. Light.

5 Q. Could you touch -- well, directing your attention to
6 MAP-34, could you touch where you saw Mr. Frazier on the map.
7 Just take your finger and touch it.

8 A. (Witness complies.)

9 Q. And when you saw Mr. Frazier, this was -- you said you did
10 not see a chase; correct?

11 A. Right.

12 Q. All right. So tell us what happened. Tell us what
13 happened. You're out there with your brother and another
14 person; right?

15 A. We was outside, and Syd was around there with us on a dirt
16 bike.

17 Q. And was he riding when you saw him?

18 A. I mean, he rode up towards us, but he was with us for a
19 second right there.

20 Q. And what street did he come down to get to
21 Dickey Hill Road that day?

22 A. I really don't remember. We was in the back of the
23 parking lot of the building.

24 Q. And do you -- in the back of the parking lot?

25 A. Yes; on Dickey Hill, but in the back of the building in

~~MALCOLM LASHLEY - CROSS~~

1 the parking lot.

2 Q. Now, when you met with the authorities, did they show you
3 the video footage of the individual riding around on the dirt
4 bike out in this area?

5 A. Yes.

6 Q. And when you watched that video footage, did you see you
7 and your brother and another individual meeting with the man on
8 the dirt bike?

9 A. No. It was just a picture.

10 Q. Of you meeting with him?

11 A. No. Of him on the dirt bike.

12 Q. All right. Did you see the video footage of the fellow
13 riding around on the dirt bike?

14 A. What you mean?

15 Q. Well, did you see a video of him on the dirt bike riding
16 around when you met with the authorities?

17 A. No.

18 Q. So you didn't -- there's no video footage of Sydni Frazier
19 pulling up on a dirt bike and meeting with you fellows;
20 correct?

21 A. No, no video.

22 Q. And it's your testimony -- what, he gets off the dirt
23 bike? Or he stays on it?

24 A. He was on the dirt bike.

25 Q. And he reaches around the back and takes the backpack off,

1 or does he leave it on?

2 A. He had the book bag on.

3 Q. Ah. Okay. And you said he showed you a gun?

4 A. Yes. That was --

5 Q. So does he just kind of reach back and reach into the
6 backpack and pull a gun out (indicating)?

7 A. No. That was before he got on the dirt bike.

8 Q. Before he got on the dirt bike?

9 A. Yes.

10 Q. Okay. Tell us about this, then. So he doesn't ride up on
11 a dirt bike. He's walking around with a backpack on at first;
12 correct?

13 A. Yes; before he got on the dirt bike.

14 Q. Okay. And what does he -- he opens up the bag and shows
15 you a gun?

16 A. No. He put one in the bag.

17 Q. He put a gun in the bag?

18 A. Yes.

19 Q. And where did he get the gun from?

20 A. He had it on him.

21 Q. Well, when you say "on him," describe it. I wasn't there.
22 Can you tell us --

23 A. Out of his pocket.

24 Q. Out of his pocket. Was it his right or his left pocket?

25 A. I don't remember that, sir.

~~MALCOLM LASHLEY - CROSS~~

1 Q. Now, do you remember what pants he had on?

2 A. No.

3 Q. Well, how do you know it was a pocket?

4 A. 'Cause that's what he pulled it out of.

5 Q. And what did he do when he pulled the gun out of his
6 pocket?

7 A. He put it in the bag.

8 Q. Put it in the bag.

9 Did he pull a big bag of heroin out of his pocket, too?

10 A. No.

11 Q. Did he have a big bag of heroin?

12 A. No.

13 Q. So he didn't show you a big bag of heroin, then?

14 A. This specific day, no.

15 Q. And what happens after he leaves on the dirt bike?

16 A. He come back maybe 30 minutes later on foot saying he got
17 chased.

18 Q. And are you still out there?

19 A. Yes.

20 Q. And you've been out there for how long between when you
21 say you saw this gun that he took out of his pocket and when he
22 comes back.

23 A. I was out there for some time.

24 Q. Mr. Lashley, do you remember telling the authorities that
25 you were present when Frazier got chased by the police on the

~~MALCOLM LASHLEY - CROSS~~

1 dirt bike during which time he dropped a backpack?

2 A. That was what he told me. I wasn't actual [sic] there
3 when he got chased. He -- where he got chased at was not where
4 we were standing before he pulled off.

5 Q. Well, did you see this chase?

6 A. No.

7 Q. Did you see where the dirt bike was found?

8 A. No, I didn't.

9 Q. Do you have any idea how much time passed from when you
10 say you saw him and he took a gun out of his pocket and when
11 this chase was to have occurred?

12 A. I said he came back maybe 30 minutes later.

13 Q. And was it dark out then?

14 A. No.

15 Q. It was still light?

16 A. Yes.

17 Q. Now, what about this big bag of heroin you were talking
18 about, when did this big bag of heroin pop up?

19 A. I don't remember the date -- the date.

20 Q. It wasn't in the book bag?

21 A. No.

22 Q. But the gun was in his pocket; right?

23 A. He took the gun out his pocket and put it in the book bag.

24 Q. And no mention of a big bag of heroin at that point in
25 time?

~~MALCOLM LASHLEY - CROSS~~

1 A. Not this day. That was a different day.

2 Q. Can you -- how many days after this day did you see this
3 big bag of heroin?

4 A. I don't remember how many days was it later.

5 Q. Well, I mean, just give us an estimate. I mean, you don't
6 have to be precise. Just give us an estimate.

7 A. I don't want to give you an estimate because I don't know.
8 I might can say something wrong. I don't know how many days it
9 was.

10 Q. Tell us about this big bag. What did it look like?

11 A. A clear bag.

12 Q. Big, clear bag and he's just walking around with it;
13 right?

14 A. No. He had it -- got out the car. He wasn't just walking
15 around with it.

16 Q. But he showed it to you?

17 A. Yes. This was a different day we was outside.

18 Q. And how much heroin did you say this was?

19 A. I'm not sure the exact amount of it.

20 Q. Well, didn't you tell the authorities it was a brick or
21 something?

22 A. No.

23 Q. You didn't tell them that?

24 A. Unh-unh.

25 Q. And you're sure you didn't tell the authorities that you

~~MALCOLM LASHLEY - CROSS~~

1 were present when Frazier got chased by the police?

2 **A.** I said I was outside that day with him, but not to see the
3 actual chase. It might have happened around the corner, around
4 the block, somewhere else, not where we were standing.

5 **Q.** Would anything refresh your recollection as to what you
6 told the authorities?

7 **A.** Yes.

8 **MS. PERRY:** Objection.

9 **THE COURT:** It's the same report of interview?

10 **MR. DAVIS:** Yes.

11 **THE COURT:** Okay. Go ahead.

12 **BY MR. DAVIS:**

13 **Q.** Would you take a moment and take a look at this report
14 that was done after your proffer session on October 15th. And
15 if you could read that first sentence and see if that refreshes
16 your recollection as to whether or not you told them you
17 observed the chase.

18 **A.** (Reviews document.)

19 This might've was wroten [sic] down wrong.

20 **Q.** So the report's wrong 'cause you didn't see it; right?

21 **A.** I didn't see him actual [sic] get chased. He came around
22 and told us he got chased. If he's riding a dirt bike and I'm
23 on foot, I wasn't on the same block when he got chased.

24 **Q.** Well, did you see police out there that day?

25 **A.** In the area, yes.

1 Q. Because you're right up where that green mark is on
2 Dickey Hill Road; right?

3 A. Yes.

4 Q. Do you know that the dirt bike was recovered up around
5 Tucker Lane --

6 A. Yes.

7 Q. -- Dickey Hill --

8 A. That was down the street --

9 Q. So it's --

10 A. That's down the street from where we was at.

11 Q. And you didn't hear all that activity?

12 A. We might have heard it, but I didn't see it. We was in
13 the back of the building.

14 Q. Were you guys just selling drugs out there?

15 A. Yes.

16 Q. So you're kind of keeping an eye on the police; right?

17 A. I mean, we in the back of the lot. We was in the --
18 behind the building, so you don't see what's on the front side
19 down the street.

20 Q. And how much time passes between when you say
21 Sydni Frazier came up and took a gun out of his pocket --

22 A. Since then in the chase.

23 Q. -- and when he came back -- and when he came back?

24 A. Maybe 30 minutes later.

25 Q. 30 minutes later.

~~MALCOLM LASHLEY - REDIRECT~~

1 Are the police still out there when he comes back?

2 **A.** I mean, they in the area riding around.

3 **Q.** Was he dressed the same?

4 **A.** Yes.

5 **Q.** Now, did your brother Rick have any -- did your brother
6 Menace have any issues with Rick?

7 **A.** Not that I know of.

8 **Q.** And your brother was MMP like Huggie also?

9 **A.** Yes.

10 **Q.** Where did Rick sell his drugs to acquire all these flashy
11 cars and clothes and things of that nature?

12 **A.** I have no idea.

13 **MR. DAVIS:** I have no further questions.

14 Thank you, Mr. Lashley.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Thank you, Mr. Davis.

17 Any redirect?

18 **MS. PERRY:** Yes, Your Honor.

19 REDIRECT EXAMINATION

20 **BY MS. PERRY:**

21 **Q.** Good afternoon.

22 **A.** Good afternoon.

23 **Q.** Now, back on Thursday and again today, you were asked
24 whether or not you had to pay a tax to sell drugs at
25 Windsor Mill and Forest Park.

1 Why didn't you have to pay a tax?

2 **A.** It was never brought to me or nothing was ever said about
3 paying any taxes to me.

4 **Q.** And why were you allowed to sell in that area?

5 **A.** 'Cause I'm from around there.

6 **Q.** Were there other people who were not allowed to sell in
7 that area?

8 **A.** Yes.

9 **Q.** And who was not allowed to sell in that area?

10 **A.** Certain guys that just wasn't from around there, like,
11 anybody just can't come around there and sell anything.

12 **Q.** Now, Mr. Lashley, you testified, I believe on Thursday
13 that you were supplied by members of MMP; is that right?

14 **A.** Yes.

15 **Q.** Were others in the area that you saw supplied by members
16 of MMP?

17 **A.** Can you say that again.

18 **Q.** Were there other people who sold drugs in the area who
19 were supplied by members of MMP?

20 **A.** Oh, yes.

21 **Q.** Based on your experience, was it common for member -- for
22 people who sold in the 5200 block to be supplied by members of
23 MMP?

24 **MR. HAZLEHURST:** Objection.

25 **THE COURT:** Do you want to rephrase.

1 **BY MS. PERRY:**

2 **Q.** Mr. Lashley, based on what you saw and people who you saw
3 being supplied, was it often members of MMP who were supplying?

4 **A.** Yes.

5 **Q.** Now, Mr. Lashley, you were charged in the same indictment
6 as the individuals who are in court today; right?

7 **A.** Yes.

8 **Q.** And that's the indictment you pled guilty to?

9 **A.** Yes.

10 **Q.** Now, I believe you were asked a number of times about
11 whether or not you got fronted drugs.

12 First of all, what does it mean to be fronted drugs?

13 **A.** Somebody just giving them to you without you paying for
14 it.

15 **Q.** And were you usually fronted drugs, or did you usually pay
16 in advance?

17 **A.** I would pay.

18 **Q.** Why?

19 **A.** Just so I wouldn't have to owe anybody no money.

20 **Q.** You were asked a number of times about your interactions
21 with Bo.

22 **A.** Right.

23 **Q.** When Bo approached you in the incidents you described,
24 what did you understand him to be asking you?

25 **A.** If I wanted any drugs --

1 **MS. AMATO:** Objection.

2 **THE COURT:** Overruled.

3 **BY MS. PERRY:**

4 **Q.** And why didn't you accept drugs from Bo?

5 **A.** Because I didn't want to have to pay him or owe him.

6 **Q.** Mr. Lashley, if you didn't have an in with someone or you
7 weren't a 5200 boy and you tried to sell in the 5200 block,
8 what would happen?

9 **MR. HAZLEHURST:** Objection.

10 **THE COURT:** Sustained.

11 **BY MS. PERRY:**

12 **Q.** You were asked on -- you were asked today about whether or
13 not you had a cell phone number for Syd.

14 How did you contact Syd?

15 **A.** I called him.

16 **Q.** So did you talk to him on the phone on occasion?

17 **A.** Yes.

18 **Q.** Did you also talk to him in person?

19 **A.** Yes.

20 **Q.** And when you talked to him in person, where would you talk
21 to him?

22 **A.** Pretty much wherever we was at in the neighborhood.

23 **Q.** Now, I want to bring you back to Thursday afternoon. You
24 were asked a number of questions about the indictment.

25 Do you remember being asked about the indictment?

1 **A.** Yes.

2 **Q.** Now, what you told us on Thursday, did you testify about
3 what you personally observed or about what you read in the
4 indictment?

5 **A.** What I personally observed.

6 **Q.** And you testified on Thursday, I believe, that Mal told
7 you he dropped Bangout off to Gutta the night Bangout was
8 killed.

9 Do you remember talking about that?

10 **A.** Yes.

11 **Q.** Was that in the indictment?

12 **A.** What, the part that he dropped him off? No.

13 **Q.** And did you testify based on what you read in the
14 indictment or about what you remember?

15 **A.** What I remember.

16 **Q.** And you testified on -- I believe you testified on
17 Thursday that you spoke to Kane right after Nutty B was killed.

18 Do you remember talking about that?

19 **A.** Yes.

20 **Q.** And was that something you read in the indictment or
21 something that you remember?

22 **A.** That's just what I remember.

23 **Q.** Did you ever see phone records in this case, Mr. Lashley?

24 **A.** None but mine.

25 **Q.** And did you ever see video of any of the murders in this

1 case?

2 **A.** No.

3 **MS. PERRY:** Court's indulgence.

4 Nothing further. Thank you.

5 **THE COURT:** All right. Anything else?

6 (No response.)

7 **THE COURT:** All right. Thank you very much.

8 The witness is excused.

9 (Witness excused.)

10 **THE COURT:** All right. We'll take a brief recess,
11 starting with excusing the jury.

12 (Jury left the courtroom at 12:05 p.m.)

13 **THE COURT:** And the Government will have plans to call
14 two additional witnesses after the break?

15 **MS. HOFFMAN:** That's right. And they should be pretty
16 quick.

17 **THE COURT:** Okay. All right. I'm going to excuse the
18 gallery.

19 (Pause.)

20 **MS. HOFFMAN:** I just wanted to add, Your Honor, we
21 have a third witness available if -- depending if we're able to
22 go until 1:00, we may be able to fit three in, if possible.

23 **THE COURT:** All right. We'll see how we do.

24 We'll take the recess now.

25 (Recess taken.)

1 (12:24 p.m.)

2 **THE COURT:** All right. Mr. Hazlehurst?

3 **MR. HAZLEHURST:** Yes, Your Honor, there is one issue
4 in regard to an upcoming witness, and I've spoken to
5 Ms. Hoffman about it.

6 When Mr. Davis was arrested on February 24th, I
7 believe of 2017, according to the report, he was approached by
8 two members of the Marshals task force, one on the right -- the
9 right hand and one on the other.

10 And contained in the report is the allegation that
11 Mr. Davis, when he was basically approached -- and I don't
12 think anybody -- he could see who was behind him -- went to his
13 dip area where a gun was later found to be.

14 And I would ask the Court to exclude that. I've
15 spoken with Ms. Hoffman. She says she intends to get into
16 that. I believe that that is certainly prejudicial, and I'm
17 not sure it's probative of anything in regard to his possession
18 of a firearm or possession of a firearm in regard to drug
19 trafficking.

20 **THE COURT:** Okay.

21 **MS. HOFFMAN:** And, Your Honor, we do think it's
22 relevant, and it's how Sergeant Sadik would tell the
23 story: that they approached him; he reached for his dip; they
24 then recovered a gun right exactly in that area.

25 He is charged with both being a felon in possession of

1 a firearm and possessing a firearm in furtherance of a
2 drug-trafficking crime. There were also drugs found on his
3 person.

4 I think the fact that he reached for his dip area
5 shows, of course, that he knew the gun was there and he was
6 ready to use it while also possessing drugs on his person. And
7 that's relevant to the 924(c) count as well.

8 **THE COURT:** Okay. Is the witness going to suggest
9 that he thought he was being threatened by the gun? No. I
10 mean, I think what happened was Mr. Davis was approached by --
11 you know, the Marshals task force officers came up behind him,
12 and his immediate reaction was just to reach for that dip area.

13 He didn't draw it and point it at them or anything
14 like that. He just reached for that area where they then found
15 a gun. And I think it's relevant that he reached for that
16 exact area. It shows that he -- you know, he knew he was armed
17 with a gun, and he was ready to use it.

18 And I wouldn't suggest that. I'm not saying that I --

19 **THE COURT:** Well, I think that's --

20 **MS. HOFFMAN:** I wouldn't have -- I don't think the
21 witness would testify to that, but I think it's a reasonable
22 inference for the jury to draw from the evidence.

23 **MR. HAZLEHURST:** And, Your Honor, again, I think that
24 that potentially is the implication, that he was going to
25 basically try and use the gun against these two officers. And,

1 again, that is very prejudicial. I'm not sure it's probative
2 of anything in regard to either of the offenses for which he's
3 charged.

4 And the fact that someone has a gun in his waistband,
5 I have yet to see the gun that would be not noticeable if it
6 was tucked into someone's waistband, so I don't think that it's
7 indicative of the idea that he knew he had a gun in his
8 waistband.

9 **THE COURT:** Would you be arguing in any way that he
10 didn't have the gun or didn't know he had the gun?

11 **MR. HAZLEHURST:** No.

12 **THE COURT:** Okay. I think unless something is opened
13 up on cross-examination, that you should instruct the witness
14 not to testify to that part of it, because I think it raises
15 the potentially prejudicial and unfairly prejudicial suggestion
16 that he might have been planning to use it against these
17 officers.

18 And from what's been described, I couldn't even tell
19 that he knew who was approaching him or what was going on at
20 the time or that he intended to use it in the way that this
21 evidence might suggest.

22 **MS. HOFFMAN:** One other issue.

23 When meeting with Sergeant Sadik this morning, when he
24 was recounting what happened, he used the word "fugitive" a
25 couple of times. Mr. Davis was a fugitive when this arrest

1 happened, and there will be evidence. There was a cell phone
2 that was recovered from his person.

3 It's not -- the excerpts are not going to come in
4 through Sergeant Sadik. But the excerpts show that there are
5 some notes in his phone suggesting that he knew that -- saying,
6 for instance, "I'm on the run from the feds," that kind of
7 thing.

8 So I think there will be evidence that he was aware
9 that there was an outstanding warrant for him, that he was on
10 the run. I think that does go to consciousness of guilt. And
11 so I don't think it's -- I think it's relevant and not more
12 prejudicial than probative for the witness to refer to him as a
13 fugitive, but I wanted to raise that issue.

14 **THE COURT:** Okay. There was an outstanding warrant
15 for him from this case, and you're proffering that there's
16 going to be other evidence indicating that he knew about the
17 indictment and was trying to avoid apprehension?

18 **MS. HOFFMAN:** That's correct.

19 **MR. HAZLEHURST:** Your Honor, I'm not sure I'm familiar
20 with those cell phone text messages. I do know that in the
21 report, there is a discussion that Mr. -- the reason Mr. Davis
22 was being sought, at least in part, by this task force was that
23 he had an outstanding arrest warrant from the Baltimore City
24 Police Department for failure to appear on a "malicious
25 destruction of property" charge, which is somewhat of a

1 different animal than, again, being on the run from the feds,
2 per se.

3 But I'm not -- if Ms. Hoffman has access to those
4 text messages, if I've seen them before, I've forgotten them,
5 but I would like to see them, if I could.

6 **MS. HOFFMAN:** Sure. And they're not text messages.
7 They're from notes in his phone. It was actually a video, and
8 he's scrolling through notes in his phone. It's kind of hard
9 to explain.

10 But it does say, "I'm on the run from the feds and
11 still got warrants in the state."

12 I think he also did have a warrant in the state, but
13 he also had a federal arrest warrant, which is why the --

14 **THE COURT:** Is that something that's up on your screen
15 that Mr. Hazlehurst could walk over and take a look at?

16 **MS. HOFFMAN:** Yes.

17 (Counsel conferred.)

18 **MR. HAZLEHURST:** Your Honor, I've seen the -- it's
19 apparently an excerpt from a cell phone. And Ms. Hoffman
20 suggests this to me -- and I'm not sure I had seen it before,
21 but it doesn't look to be rap lyrics. It does mention
22 something about being on the run from the feds.

23 Again, Your Honor, I'm not sure that it is
24 ultimately -- I think the prejudicial value of just referring
25 to him as a fugitive, especially when there are different

1 reasons that it could be that he was being sought is
2 certainly -- the prejudice of that is ultimately going to
3 outweigh the probative value. And I would submit on that,
4 Your Honor.

5 **THE COURT:** All right. Well, on that issue, given the
6 proffer by the Government as to that particular language, first
7 of all, I don't think it carries the same risk of unfair
8 prejudice as the previous matter might.

9 It is something, which if sufficiently proved, could
10 be indicative of consciousness of guilt if the jury decides to
11 view it that way.

12 So I'll overrule the objection as far as the witness
13 being able to refer to Mr. Davis as a fugitive, but we will
14 need to instruct him on the other matter.

15 Perhaps if Mr. Hazlehurst -- is he your witness,
16 Ms. Hoffman?

17 **MS. HOFFMAN:** He is. And we can bring him in and
18 instruct him together, whatever the Court prefers.

19 **THE COURT:** That's what I'm thinking, that --

20 **MR. HAZLEHURST:** Fine, Your Honor.

21 **THE COURT:** -- we just bring him in. He can come up
22 to the witness stand anyway. And if Mr. Hazlehurst and
23 Ms. Hoffman together want to just tell him not to mention the
24 gesture.

25 Let's bring in the witness.

1 Before you start, we just have -- counsel are going to
2 come and advise you of one matter that should not be
3 mentioned --

4 **THE WITNESS:** No problem, Your Honor.

5 **THE COURT:** -- during your testimony.

6 (Ms. Hoffman and Mr. Hazlehurst conferred with the
7 witness.)

8 **THE COURT:** Okay. Satisfactory, Mr. Hazlehurst?

9 **MR. HAZLEHURST:** Yes, Your Honor. Thank you.

10 **THE COURT:** All right. Thank you.

11 Thank you. We're still waiting.

12 You can stay there. If you don't mind, you can sit
13 down for a minute, if you want.

14 We're going to get the jury.

15 (Jury entered the courtroom at 12:36 p.m.)

16 **THE COURT:** Call your next witness.

17 **MS. HOFFMAN:** The Government calls Nayim Sadik.

18 **THE CLERK:** Please raise your right hand.

19 DETECTIVE SERGEANT NAYIM SADIK, GOVERNMENT'S WITNESS,
20 SWORN.

21 **THE CLERK:** Please be seated.

22 Please speak directly into the microphone.

23 State and spell your full name for the record, please.

24 **THE WITNESS:** Sure. Detective Sergeant Nayim Sadik.

25 N-A-Y-I-M, as in Mary; last name, Sadik, S-A-D-I-K.

~~SADIK - DIRECT~~

1 **THE CLERK:** Thank you.

2 DIRECT EXAMINATION

3 **BY MS. HOFFMAN:**

4 **Q.** Good afternoon, Sergeant.

5 **A.** Good afternoon.

6 **Q.** And I apologize if I mispronounced your first name.

7 Can you tell us where you work.

8 **A.** That's correct. I am a Detective Sergeant with the
9 Maryland State Police assigned to the criminal enforcement
10 division.

11 **Q.** And at one point in time were you assigned to a task force
12 with the U.S. Marshals?

13 **A.** Yes, ma'am.

14 **Q.** And when were you part of that task force?

15 **A.** I believe from 2011 to early 2019.

16 **Q.** And what were your duties as part of that U.S. Marshals
17 task force?

18 **A.** I was assigned as a team leader of the Baltimore task
19 force for the Capital Area Regional Fugitive Task Force.

20 **Q.** And as part of your duties, were you asked to assist in
21 apprehending an individual named Shakeen Davis?

22 **A.** Yes, ma'am.

23 **Q.** And I want to direct your attention to February 24th of
24 2017.

25 Did you make an arrest on that day?

~~SADIK - DIRECT~~

1 **A.** We did.

2 **Q.** And who did you arrest?

3 **A.** Mr. Shakeen Davis.

4 **Q.** And would you recognize him if you saw him again today?

5 **A.** Yes, ma'am.

6 **Q.** And would you mind looking around and telling us if you
7 see him in the courtroom.

8 **A.** I do. He's wearing the blue shirt, looking down
9 (indicating).

10 **Q.** Thank you.

11 Where did you locate Mr. Davis?

12 **A.** In the Mondawmin Mall Foot Locker, which is located in the
13 Western District of Baltimore City.

14 **Q.** And can you tell us what happened on February 24th of
15 2017, when you arrested him.

16 **A.** Yes, ma'am. At around 15:15 hours, which would be
17 3:15 p.m., Deputy U.S. Marshal Mike Brown was assigned a
18 fugitive investigation for Mr. Shakeen Davis.

19 He contacted me and advised that he believed Mr. Davis was
20 in the area of Mondawmin Mall, at which time task force members
21 responded to the mall, began conducting covert surveillance
22 after establishing a perimeter.

23 Myself and Inspector Barfels of the U.S. Marshals were a
24 two-man vehicle.

25 Shortly after, we observed an individual resembling

~~SADIK - DIRECT~~

1 Mr. Davis walk up the steps and towards the mall between the
2 Dunkin' Donuts and the 7 -- I'm sorry, Burger King.

3 Shortly after Deputy U.S. Marshal Nesbitt observed the
4 same individual enter the mall, we then had Deputy U.S. Marshal
5 Tristan Martin enter the mall in plainclothes to attempt to
6 positively identify Mr. Davis.

7 Shortly after, he advised he did identify him, at which
8 point myself and Inspector Barfels were dressed in
9 plainclothes, and we entered the mall towards the Foot Locker.

10 Mr. Davis was in line. There were approximately three
11 individuals between Mr. Davis and the cash register facing the
12 back of the building, so we waited for the three individuals to
13 move. And when he was at the register, we used the element of
14 surprise, approached him from the rear.

15 Deputy Tristan Martin grabbed his upper body. I grabbed
16 his right arm. And Deputy Barfels, correction inspector,
17 grabbed his left arm. And we placed him in handcuffs.

18 **Q.** And when Mr. Davis was placed in handcuffs, did he make
19 any statements?

20 **A.** So once he was placed in handcuffs, he was polite and
21 cooperative with us. We asked him if he had anything on his
22 person that we should know about prior to searching him.

23 He advised up front, at which point as I was patting him
24 down, I observed what appeared to be the butt of a
25 semi-automatic handgun in his waistband; lifted his shirt and

~~SADIK - DIRECT~~

1 located a firearm, which was removed and handed to
2 Deputy Tristan Martin.

3 Q. I believe you spoke a little quickly, but did you say he
4 advised there was something up front?

5 A. Yes, ma'am.

6 MR. HAZLEHURST: Objection; asked and answered.

7 THE COURT: Overruled.

8 BY MS. HOFFMAN:

9 Q. And I'm going to approach now and show you
10 Government's Exhibit F-26.

11 (Handing.)

12 Do you recognize that exhibit?

13 A. I do, ma'am.

14 Q. And can you tell us what that is.

15 A. This is a SIG SAUER 1911 semi-automatic handgun.

16 Q. Is that the gun that was recovered from Mr. Davis's
17 waistband area?

18 A. That is correct.

19 Q. And I'm going to first ask you, if you can, can you read
20 the serial number off that gun.

21 A. Yes, ma'am.

22 It is T, as in Tom, 148576.

23 Q. And I'm going to pull up Government's Exhibit AP-6-E.

24 Can you tell us what we're looking at here.

25 A. That is the firearm that's currently in front of me.

~~SADIK - DIRECT~~

1 Q. And was the firearm loaded?

2 A. That is correct.

3 Q. How many rounds was it loaded with?

4 A. Unfortunately, I would have to look in my report.

5 If I may?

6 Q. That's no problem. Do you have your report in front of
7 you, or do you want me to walk it up to you?

8 A. If you can walk it up to me, please.

9 Q. (Handing.)

10 A. Thank you.

11 Ma'am, the weapon was fully loaded; with the magazine,
12 contained eight rounds of ammunition.

13 Q. And I'm going to show you Government's Exhibit AP-6-D.

14 And what are we looking at here?

15 A. Same firearm.

16 Q. Was a search of Mr. Davis's person conducted incident to
17 his arrest?

18 A. Yes, ma'am.

19 Q. And what, if anything, was recovered from Mr. Davis's
20 person?

21 A. Mr. Davis was walked to the back corner of the
22 Foot Locker. And the search of Mr. Davis revealed
23 cellular telephones; one clear plastic container with a white
24 top which contained marijuana; one child's sock containing one
25 large, clear plastic bag which inside contained four individual

~~SADIK - DIRECT~~

1 clear plastic baggies that contained a white powder and rocks
2 which were suspected cocaine; five small pills, one white and
3 four green, were in Mr. Davis's front right coin pocket, along
4 with U.S. currency and other miscellaneous property.

5 **Q.** And you mentioned that there were cell phones recovered.

6 Do you recall how many cell phones?

7 **A.** I do not, ma'am.

8 **Q.** I'm going to approach and show you

9 Government's Exhibit CELL-3.

10 (Hanging.)

11 Can you tell us what you're looking at there.

12 **A.** Yes, ma'am. May I?

13 **Q.** Sure. Yeah.

14 **A.** Thank you.

15 An LG cellular telephone.

16 **Q.** And is that one of the cell phones that was recovered from
17 Mr. Davis's person that day?

18 **A.** Yes, ma'am.

19 **Q.** And you mentioned a child's sock containing suspected
20 cocaine and also suspected marijuana, and I'm going to approach
21 and show you Government's Exhibit D-24.

22 (Hanging.)

23 Can you tell us what you're looking at there.

24 **A.** I'm looking at an evidence package for property which
25 contains narcotics, cocaine; four baggies of crack; and one --

~~SADIK - DIRECT~~

1 and, I'm sorry, five white pills.

2 **Q.** And is this the drug evidence recovered from Mr. Davis on
3 that day?

4 **A.** Looking at the packaging inside of the bag, yes, ma'am.

5 **Q.** I'm going to show you Government's Exhibit AP-6-B.
6 What are we looking at here?

7 **A.** That is the child's sock that we recovered.

8 **Q.** And I'm going to show you Government's Exhibit AP-6-C.
9 What are we looking at here?

10 **A.** We are looking at the white container that I advised of
11 with suspected marijuana in addition to the clear
12 plastic baggie which contained the four clear plastic baggies
13 with the whitish rock-like substance.

14 **Q.** And is this a picture of the suspected narcotics recovered
15 from Mr. Davis on that day?

16 **A.** Yes, ma'am.

17 **Q.** Was the -- once the drug evidence was recovered, was --
18 did you turn it over to ATF for possible testing?

19 **A.** Yes, ma'am.

20 **MS. HOFFMAN:** Thank you, Sergeant Sadik. I have no
21 further questions.

22 **THE COURT:** Thank you. Thank you, Ms. Hoffman.
23 Mr. Hazlehurst?

24 **MR. HAZLEHURST:** No questions, Your Honor. Thank you.

25 **THE WITNESS:** Your Honor, may I step down?

~~COLLIER - DIRECT ON VOIR DIRE~~

1 **THE COURT:** I believe so, yes.

2 **THE WITNESS:** Thank you.

3 **THE COURT:** Thank you very much.

4 (Witness excused.)

5 **THE COURT:** Does the Government have another witness?

6 **MS. PERRY:** Yes, Your Honor. The Government calls
7 Special Agent David Collier.

8 **THE CLERK:** Please raise your right hand.

9 SPECIAL AGENT DAVID COLLIER, GOVERNMENT'S WITNESS,
10 SWORN.

11 **THE CLERK:** Please be seated.

12 Please speak directly into the microphone.

13 State and spell your full name for the record, please.

14 **THE WITNESS:** My name is David Collier. First name is
15 D-A-V-I-D; last name is C-O-L-L-I-E-R.

16 **THE CLERK:** Thank you.

17 DIRECT EXAMINATION ON VOIR DIRE

18 **BY MS. PERRY:**

19 **Q.** Good afternoon.

20 **A.** Good afternoon.

21 **Q.** With which law enforcement agency are you employed?

22 **A.** With the Bureau of Alcohol, Tobacco, Firearms &
23 Explosives, also known as the ATF.

24 **Q.** And what's your title with the ATF?

25 **A.** I'm a Special Agent.

~~COLLIER - DIRECT ON VOIR DIRE~~

1 Q. How long have you been a Special Agent with the ATF?

2 A. For approximately 11 years.

3 Q. And what did you do prior to joining ATF?

4 A. Before that, law enforcement-wise, I was a U.S. Marshal, a
5 deputy U.S. Marshal for five years, and I was a Baltimore
6 Police Officer prior to that.

7 Q. Do you have any special duties in your role as a
8 Special Agent?

9 A. I do.

10 Q. Can you explain.

11 A. In addition to my standard duty of conducting criminal
12 investigations, I also am classified as a firearms interstate
13 nexus expert. And I'm also a firearms instructor.

14 Q. What are your duties as an expert in firearms
15 identification and classification?

16 A. I've been trained to determine the place of manufacture of
17 firearms, so I conduct a lot of research into firearms to
18 determine where they're made, where they have traveled, and how
19 they move from place to place.

20 Q. Do you have any special training that assists you in these
21 duties?

22 A. Yes, I do.

23 Q. Can you describe.

24 A. So my training started back in 2009 when I went to a basic
25 firearms interstate nexus training course. That was a week

~~COLLIER - DIRECT ON VOIR DIRE~~

1 long at our facilities out in Martinsburg, West Virginia.

2 I learned the basics of the process and was able to refer
3 to our reference collection, which is a library of firearms
4 that we have out there, I was able to go hands on and actually
5 look at -- look at firearms. I was able to collect a lot of
6 reference sources. So I went through that course for a week.

7 And then I have since then gone back for a couple of
8 additional courses, more-advanced courses, to include going on
9 tours of firearms manufacturing facilities, primarily up in the
10 New England states, and have actually been on the factory floor
11 of a lot of firearms-manufacturing locations and seen the
12 process by which they're made and talked with a lot of the
13 executives within the industry to learn more about the travel
14 of firearms once they leave the factory.

15 **Q.** Do you have any certifications?

16 **A.** I am certified as a firearms interstate nexus expert with
17 ATF.

18 **Q.** And have you been qualified as an expert in the field of
19 interstate nexus of firearms?

20 **A.** Yes, I have.

21 **Q.** Can you tell us how many times and in which courts.

22 **A.** On approximately 13 prior occasions, all times here in the
23 United States District Court for the District of Maryland,
24 including five times in front of this Court.

25 **MS. PERRY:** Your Honor, at this time the Government

~~COLLIER - DIRECT~~

1 would offer Special Agent Collier as an expert in the field of
2 firearms identification and interstate nexus of firearms.

3 **THE COURT:** Okay. Questions or objections?

4 **MS. WHALEN:** No, Your Honor. Thank you.

5 **THE COURT:** All right. Based on the witness's
6 training and education and experience, I will find him
7 qualified to give opinion testimony in the field of firearms
8 identification and interstate nexus.

9 Thank you.

10 DIRECT EXAMINATION

11 **BY MS. PERRY:**

12 **Q.** Agent Collier, as part of your duties as a firearms
13 expert, were you asked to examine firearms and ammunition in
14 connection with this case?

15 **A.** Yes, I was.

16 **Q.** And other than those tasks, did you have any involvement
17 in this investigation?

18 **A.** No, I did not.

19 **Q.** So I first want to approach and show you
20 Government's Exhibit F-33.

21 (Handing.)

22 Do you recognize this exhibit?

23 **A.** Yes, I do.

24 **Q.** What is it?

25 **A.** This is a Beretta pistol, Model 92FS.

~~COLLIER - DIRECT~~

1 And I'm looking for the serial number on it.

2 The serial number is BER659285, and beside that it says
3 [reading]: Type M9A1.

4 Q. And is this a firearm that you examined in the course of
5 this investigation?

6 A. Yes, it is.

7 Q. Agent Collier, are you familiar with the definition of a
8 firearm?

9 A. Yes, I am.

10 Q. What is the definition of a firearm?

11 A. It's a weapon which will expel a projectile by the action
12 of an explosive.

13 Q. And did you form an opinion as to whether
14 Government's Exhibit F-33 meets the definition of a firearm?

15 A. Yes, I did.

16 Q. What is your opinion?

17 A. I believe that it does meet the definition of a firearm
18 under federal law.

19 Q. Were you able to determine where this firearm was
20 manufactured?

21 A. Yes, I was.

22 Q. Can you tell us.

23 A. It was manufactured in Maryland.

24 Q. And did this firearm ever travel outside the state of
25 Maryland?

~~COLLIER - DIRECT~~

1 **A.** Yes, it did. And I know this because in my communications
2 with Beretta, where I have visited their factory before and I
3 have talked with executives there, I know that for this
4 particular model, it was transferred -- after it was produced
5 in Maryland, transferred to a warehouse in Virginia where they
6 would routinely hold a lot of their stock; and from Virginia,
7 then it moved on in commerce after that. So it did travel
8 outside the state prior to the first point of sale to the
9 public market.

10 **Q.** And is it your opinion that the firearm traveled in
11 interstate commerce before being recovered in Maryland?

12 **A.** Yes, it is.

13 So based on the fact that I know it went from Maryland to
14 Virginia, it has to have crossed state lines and, therefore,
15 traveled in interstate commerce prior to being recovered here
16 in Maryland.

17 **Q.** I now want to show you Government's Exhibit F-18.

18 (Handing.)

19 Do you recognize this exhibit?

20 **A.** Yes, I do.

21 **Q.** What is it?

22 **A.** This is a Ruger pistol. It's a model SR22, .22-caliber.
23 And the serial number on it, I can tell from the evidence tag,
24 is 36375990.

25 **Q.** And did you examine this firearm before coming to court

~~COLLIER - DIRECT~~

1 today?

2 **A.** Yes, I did.

3 **Q.** And did you form an opinion as to whether
4 Government's Exhibit F-18 meets the definition of a firearm?

5 **A.** Yes, I believe it does meet that definition.

6 **Q.** And were you able to determine where this firearm was
7 manufactured?

8 **A.** Yes, I did. I determined that this firearm was
9 manufactured in Arizona.

10 **Q.** And how were you able to determine that?

11 **A.** Because I have consulted with Ruger on a number of prior
12 occasions. I've examined similar firearms, and I know that
13 there are pistols of this model and caliber are manufactured in
14 their facilities in Prescott, Arizona.

15 **Q.** And is it your opinion that the firearm traveled in
16 interstate commerce before coming to Maryland?

17 **A.** Yes. Based on the fact that it was manufactured in a
18 state other than Maryland and recovered in Maryland, it,
19 therefore, would have had to cross state lines to come into
20 Maryland and would have traveled in interstate commerce.

21 **Q.** I'm now going to show you Government's Exhibit F-19.

22 (Hanging.)

23 Can you tell us what Government -- first of all, do you
24 recognize Government's Exhibit F-19?

25 **A.** Yes, I do.

~~COLLIER - DIRECT~~

1 Q. What is it?

2 A. This is a -- what's commonly referred to as a
3 Springfield Armory pistol. The model on it is DXD. And the
4 serial number is M as in Mary, G as in George, 500105,
5 .45-caliber.

6 Q. And did you examine this firearm -- this exhibit before
7 coming to court today?

8 A. Yes, I did.

9 Q. And did you form an opinion as to whether
10 Government's Exhibit F-19 meets the definition of a firearm?

11 A. I believe that it does meet that same definition.

12 Q. And were you able to determine where this firearm was
13 manufactured?

14 A. Yes, I was. This firearm, the -- this is the frame of the
15 firearm right here. This was actually made in Croatia. It's
16 stamped as such on the frame. It says, "Made in Croatia."

17 And it was imported by Springfield into the state of
18 Illinois, so it traveled in both foreign commerce from outside
19 the U.S. into the U.S. and then in interstate commerce from
20 Illinois to however it came to travel into Maryland.

21 Q. And so is it your opinion that the firearm traveled in
22 both interstate and foreign commerce before coming to Maryland?

23 A. Yes, it is.

24 Q. I'm now going to show you Government's Exhibit F-25, at
25 this point for identification only.

~~COLLIER - DIRECT~~

1 (Handing.)

2 Do you recognize this exhibit?

3 **A.** Yes, I do.

4 **Q.** What is it?

5 **A.** This is a Glock pistol. It is a model 19, 9-millimeter.

6 And the serial number on it is M, as in Mary; N, as in Nancy;

7 N, as in Nancy, 356.

8 **Q.** And did you examine Government's Exhibit F-25 before
9 coming to court?

10 **A.** Yes, I did.

11 **Q.** And did you form an opinion as to whether or not
12 Government's Exhibit F-25 meets the definition of a firearm?

13 **A.** I believe that it meets that same definition.

14 **Q.** And were you able to determine where this firearm was
15 manufactured?

16 **A.** Yes. This firearm was manufactured overseas in Austria.
17 And it came into the United States to Glock, Inc., which is
18 located in the state of Georgia.

19 **Q.** And so did you form an opinion as to whether this firearm
20 traveled in interstate or foreign commerce before coming to
21 Maryland?

22 **A.** Yes. Based on the fact that it was manufactured outside
23 of the United States and came into the United States, it would
24 have traveled in foreign commerce. And it also would have
25 traveled in interstate commerce on the way from Georgia to

COLLIER - DIRECT

1 Maryland.

2 Q. Now, Agent Collier, were you also provided ammunition in
3 connection with this firearm?

4 A. I was provided ammunition. I'm not sure if it went
5 specifically with this exhibit or not, but I did look at
6 ammunition.

7 Q. And can you describe the ammunition that you looked at.

8 A. It was, I believe, 9-millimeter ammunition of a couple
9 different manufacturers.

10 Q. And were you able to determine whether the ammunition was
11 manufactured inside or outside the state of Maryland?

12 A. I know that that ammunition was not manufactured in the
13 state of Maryland.

14 Q. And how did you come to that conclusion?

15 A. The ammunition that I looked at was of a manufacturer by
16 certain -- certain companies that produced it, and they have
17 never had any facilities in the state of Maryland. So they,
18 therefore, would have had to have produced it outside the state
19 of Maryland. And if it was recovered here in Maryland, it
20 would have had to have traveled across state lines to come into
21 the state.

22 Q. Now, Agent Collier, I want to talk about ammunition
23 generally.

24 Are you familiar with major commercial producers of
25 ammunition?

~~COLLIER - DIRECT~~

1 A. Yes, I am.

2 Q. And have any major commercial producers of ammunition ever
3 been manufactured in the state of Maryland?

4 A. They have not, to my knowledge.

5 Q. And so would commercially produced ammunition from major
6 manufacturers have, if it had been -- if ammunition from major
7 commercial manufacturers was recovered in the state of
8 Maryland, do you have an opinion as to whether or not that
9 ammunition would have traveled in interstate commerce?

10 A. Yes. Based on the fact that the major commercial
11 manufacturers -- and I'm thinking the Winchesters, the
12 Remingtons, Speer, CCI, these companies, based on the fact that
13 they've never had facilities here in Maryland, couldn't have
14 made ammunition here in Maryland. So it would have to have
15 crossed interstate lines to come into this state.

16 Q. So now I want to show you Government's Exhibit F-26.

17 (Handing.)

18 Do you recognize this exhibit?

19 A. Yes, I do.

20 Q. What is it?

21 A. This is a SIG SAUER pistol. Model as stamped on it is a
22 1911-22, meaning .22-caliber. The serial number on it -- I'm
23 going to read it off the evidence tag because it's hard to see
24 it on the weapon -- is T148576.

25 Q. And did you examine Government's Exhibit F-26 before

~~COLLIER - DIRECT~~

1 coming to court today?

2 A. Yes, I did.

3 Q. And did you form an opinion as to whether
4 Government's Exhibit F-26 meets the definition of a firearm?

5 A. I believe it does meet that same definition.

6 Q. And were you able to determine where this firearm was
7 manufactured?

8 A. This firearm was manufactured in Germany.

9 Q. And how were you able to determine that?

10 A. Through my research into SIG SAUER and also the fact that
11 it's stamped right here on the frame, which is a clue. Right
12 here in the white lettering, it says, "Made in Germany."

13 And then here on the slide, it says "SIG SAUER,
14 Incorporated, Exeter, New Hampshire," which is the importer's
15 marking.

16 Q. I'm sorry. You said the importer's mark was in what
17 state?

18 A. New Hampshire.

19 Q. And so did you form an opinion as to whether the firearm
20 traveled in interstate or foreign commerce before coming to
21 Maryland?

22 A. Yes. I believe that because it was manufactured in
23 Germany and came into the United States, foreign commerce is
24 involved. And the fact that it was imported to New Hampshire
25 and then came to be recovered in Maryland, interstate commerce

~~COLLIER - DIRECT~~

1 is involved. So both foreign and interstate commerce for this
2 weapon.

3 Q. Now, I'm going to show you Government's Exhibit F-17.

4 (Handing.)

5 Do you recognize this?

6 A. Yes, I do.

7 Q. What is it?

8 A. This is a Glock pistol. The model is 22. It's
9 a .40-caliber. And the serial number is H, as in Henry; H, as
10 in Henry; C, as in Charles; 901.

11 Q. And did you examine Government's Exhibit F-17 before
12 coming to court?

13 A. Yes, I did.

14 Q. And did you form an opinion as to whether
15 Government's Exhibit F-17 meets the definition of a firearm?

16 A. I believe it meets that same definition.

17 Q. Were you able to determine where this firearm was
18 manufactured?

19 A. It was also manufactured in Austria, just like the other
20 Glock.

21 Q. And did you form an opinion as to whether this firearm
22 traveled in interstate or foreign commerce before coming to
23 Maryland?

24 A. For the same reasons as the other Glock pistol, I believe
25 this one traveled in foreign commerce from Austria to the

~~COLLIER - DIRECT~~

1 United States and in interstate commerce from Glock's
2 importation facilities in the state of Georgia to Maryland.

3 Q. Now I'm going to show you Government's Exhibit F-24.

4 (Hanging.)

5 Do you recognize Government's Exhibit F-24?

6 A. Yes, I do.

7 Q. What is it?

8 A. This is a Taurus pistol. The model is PT111,
9 Generation 2, abbreviated as G2. And the serial number on
10 it -- it's a little bit harder to read on the frame. Looks
11 like T, as in Tom, M, 173204.

12 Q. And did you examine this firearm before coming to court
13 today?

14 A. Yes, I did.

15 Q. And did you form an opinion as to whether
16 Government's Exhibit F-24 meets the definition of a firearm?

17 A. I believe it meets that definition.

18 Q. Were you able to determine where this firearm was
19 manufactured?

20 A. This firearm was manufactured in Brazil, and it was
21 imported through the state of Florida.

22 Q. And did you form an opinion as to whether this firearm
23 traveled in interstate or foreign commerce before coming to
24 Maryland?

25 A. Yes, I believe that, based on the fact that it was

~~COLLIER - DIRECT~~

1 manufactured in Brazil, it traveled in foreign commerce to come
2 into the United States. And based on the fact that it was
3 imported into the state of Florida and subsequently recovered
4 in Maryland, it also traveled in interstate commerce. So both
5 foreign and interstate commerce.

6 **Q.** I'm now going to show you Government's Exhibit F-23.

7 (Hanging.)

8 Do you recognize Government's Exhibit F-23?

9 **A.** Yes, I do.

10 **Q.** What is it?

11 **A.** This is a Smith & Wesson pistol, Model M&P9. That's a
12 9-millimeter caliber. And the serial number is H as in Henry,
13 A as in Adam, E as in Edward, 04, and it looks like the last
14 two are 66.

15 **Q.** And did you examine Government's Exhibit F-23 before
16 coming to court today?

17 **A.** Yes, I did.

18 **Q.** Did you form an opinion as to whether
19 Government's Exhibit F-23 meets the definition of a firearm?

20 **A.** Yes, I believe it is a firearm as defined under federal
21 law.

22 **Q.** And did you determine where this firearm was manufactured?

23 **A.** Yes. This was actually contracted by Smith & Wesson to a
24 manufacturer in the state of Connecticut. And then after the
25 polymer frame portion right here was made in the state of

~~COLLIER - DIRECT~~

1 Connecticut, it was shipped back to Smith & Wesson, who
2 operates out of the state of Massachusetts. It was assembled
3 there, and then it was sent on from there.

4 **Q.** And did you form an opinion as to whether or not this
5 firearm traveled in interstate or foreign commerce before
6 coming to Maryland?

7 **A.** Yes. I believe it traveled in interstate commerce based
8 on the fact that it was manufactured in a state other than
9 Maryland.

10 **Q.** And, finally, I'm going to show you
11 Government's Exhibit F-16.

12 (Handing.)

13 Do you recognize Government's Exhibit F-16?

14 **A.** Yes, I do.

15 **Q.** What is it?

16 **A.** This is a DPMS rifle. The model is A15, and it's a
17 .223-caliber weapon. And the serial number on it is F, as in
18 Frank, 071734.

19 **Q.** And did you examine Government's Exhibit F-16 before
20 coming to court?

21 **A.** Yes, I did.

22 **Q.** Did you form an opinion as to whether
23 Government's Exhibit F-16 meets the definition of a firearm?

24 **A.** I believe it does meet that definition.

25 **Q.** Were you able to determine where this firearm was

~~COLLIER - DIRECT~~

1 manufactured?

2 **A.** This firearm was subcontracted from DPMS, which is located
3 in Minnesota, to a manufacturer located in the state of Utah.

4 **Q.** And did you form an opinion as to whether this firearm
5 traveled in interstate commerce before coming to Maryland?

6 **A.** Yes. Based on the fact that it was made in Utah and had
7 to have crossed state lines to come into the state of Maryland,
8 I believe it did travel in interstate commerce.

9 **MS. PERRY:** Nothing further. Thank you.

10 **THE COURT:** Thank you.

11 Do you want to just retrieve the gun.

12 **MS. PERRY:** Yes.

13 **THE COURT:** Any cross-examination?

14 **MS. WHALEN:** No. Thank you.

15 **THE COURT:** Thank you very much, sir.

16 You are excused.

17 **THE WITNESS:** Thank you.

18 (Witness excused.)

19 **THE COURT:** If I could see counsel at the bench on the
20 schedule.

21 (Bench conference on the record:

22 **THE COURT:** So we've finished the two witnesses that
23 you needed to. Okay.

24 Consistent with what we discussed this morning in
25 chambers, I would propose to excuse the jury at this point.

1 We'll bring the jury back tomorrow at 10:00.

2 There are matters to be discussed with counsel and
3 clients. So I would propose perhaps just to set a time of
4 4 o'clock for everybody to be back in court, if that's
5 acceptable.

6 **MS. WHALEN:** If we think, Your Honor, that we're all
7 ready, if we're there, should we just notify chambers?

8 **THE COURT:** Yes. You can notify chambers if everybody
9 is ready. And it would make sense to me before that, I would
10 just be in my office, so it could be before 4 o'clock. But
11 I'll set 4 o'clock as a definite time.

12 Okay. And I'm just going to tell the jury that there
13 are issues we have to discuss. Okay.)

14 (Bench conference concluded.)

15 **THE COURT:** All right. So, ladies and gentlemen,
16 we've -- obviously, it's just a little bit after 1:00.

17 This happens sometimes. There are some issues that I
18 need to discuss with counsel and their clients this afternoon,
19 and I think it's not something where it makes sense for me to
20 keep you all waiting around. So I'm sorry, but I'm going to
21 give you the afternoon off.

22 There will still be some more evidence to be heard.
23 I'm going to ask you to come back tomorrow at 10:00, but I'm
24 excusing you for the rest of the day on the usual instructions.

25 And thank you very much.

1 (Jury excused at 1:08 p.m.)

2 **THE COURT:** All right. We are going to adjourn for --
3 or recess for right now.

4 I'm asking that everyone, counsel and clients, be back
5 in the courtroom at 4 o'clock.

6 If everyone is ready to proceed before 4 o'clock, you
7 can let me know and we'll gather again before 4 o'clock, but at
8 least as of 4 o'clock, we'll be back in court together.

9 All right. We'll excuse the gallery.

10 And, Ms. Moyé, I'll just ask to have you meet me
11 briefly.

12 And, otherwise, we are in recess until 4:00 unless I
13 hear from you to start back earlier. Okay?

14 (Recess taken.)

15 (3:09 p.m.)

16 (Outside the presence of the jury.)

17 **THE COURT:** Good afternoon. We're resuming.

18 And before we start, just so I don't forget, I don't
19 think I have a proposed verdict sheet.

20 **MS. HOFFMAN:** I think that's right, Your Honor. I'm
21 sorry. We will remedy that quickly.

22 **THE COURT:** Okay.

23 So let me just briefly start, and then I'll hear from
24 counsel.

25 Very late last week, I received some information at a

1 conference call with Mr. Davis, Mr. Frazier's counsel, and the
2 Government on Friday afternoon; met this morning with counsel
3 in chambers; and the reason that I sent the jury out was for
4 counsel to have an opportunity to consult with their clients
5 today.

6 And, again, I'll let Mr. Davis say whatever he would
7 want to at this point.

8 But the bottom line is that Mr. Davis has a medical
9 situation that is very serious that he has been advised and I
10 have been advised by him requires imminent surgery -- in fact,
11 probably Thursday of this week -- so that it is not realistic
12 to think that he can continue with the representation of
13 Mr. Frazier, unfortunately.

14 We are close to the end. And at least, unless it's
15 changed as of this morning, I believe that Mr. Davis's advice
16 from his doctors was that the earliest possible time -- and
17 it's not a guarantee -- but the earliest possible time he might
18 be able to return would be six weeks. It would be at least six
19 weeks.

20 So we have discussed various options. And I have at
21 least a preliminary opinion of what needs to happen. But, of
22 course, I will hear from counsel, now that everyone's had a
23 chance to consult with their clients.

24 And I would start with Mr. Davis.

25 Anything you would like to put on the record?

1 **MR. DAVIS:** Your Honor has pretty much covered it.
2 That is the situation. I have to have surgery on Thursday at
3 11:00 a.m., and I am going to be out for a minimum of six
4 weeks.

5 So under the circumstances, I would ask Your Honor to
6 make a finding that Mr. Frazier should be taken out of the case
7 and he be granted a mistrial at this point in time.

8 I've spoken to Mr. Frazier about this. He does not
9 object to this. He has requested I stay in in the event he's
10 retried in the future; but other than that, that's his
11 position.

12 **THE COURT:** Okay. Is that correct, Mr. Frazier?

13 **DEFENDANT FRAZIER:** Yes, ma'am. I just want on the
14 record that whatever happen, I just want to proceed with Mr. --
15 Mr. Davis.

16 And however long his process take, I just -- I'm
17 willing to wait.

18 **THE COURT:** Okay. Okay. Well, I hope we'll be able
19 to do that eventually.

20 And, Mr. Davis, I guess I would ask you -- I think
21 this is sufficient for now; but if you could file something
22 under seal from one of your responsible physicians -- just
23 obviously I don't doubt you for a moment, but for the record,
24 to have something under seal.

25 **MR. DAVIS:** That's being prepared today. I'll have it

1 filed tomorrow afternoon.

2 **THE COURT:** Okay. All right. Thank you.

3 I'd be happy to hear anything other counsel would like
4 to say, if anything, at this point, starting with Ms. Whalen.

5 **MS. WHALEN:** I don't think there's anything to add,
6 Your Honor.

7 **THE COURT:** Okay. Mr. Sardelli?

8 **MR. SARDELLI:** Your Honor, my only thing I have to add
9 is that Mr. Banks has requested that I request a mistrial for
10 him as well, Your Honor. I met with him, and he specifically
11 requested me to make that request.

12 I don't know if you want to take it up at a later time
13 or not, whenever it's convenient for the Court.

14 **THE COURT:** I'm sorry. I can't hear you.

15 **MR. SARDELLI:** I said so he's requested that I make
16 that request, Your Honor.

17 I'm not sure if you want me to talk about that now or
18 at some other point, Your Honor.

19 **THE COURT:** Oh, I think we probably need to settle
20 that this afternoon, so if there's anything you'd like to say
21 in support of that.

22 **MR. SARDELLI:** I think the fear is, Your Honor, that
23 we're so far along in the trial and so much evidence has come
24 in.

25 For example, Mr. Davis's -- excuse me.

1 Mr. Frazier's postarrest statement to law enforcement,
2 for example, has come in.

3 And some of the evidence that's come in is going to
4 need to be scrubbed to see if it's evidence that would not have
5 come in but for Mr. Frazier being in the case.

6 And one thing I can think of off the top of my head
7 possibly is the postarrest statement that he gave to
8 law enforcement, for example.

9 But my client has specifically requested that I
10 request a mistrial on his behalf and that we look at the record
11 to see if other things that should not be there but for
12 Mr. Frazier should be dealt with, Your Honor.

13 **THE COURT:** Okay.

14 **MR. SARDELLI:** Thank you.

15 **THE COURT:** Mr. Trainor?

16 **MR. TRAINOR:** Your Honor, Mr. Lockley has requested
17 that I join that motion.

18 Clearly, though, we have no objection to Mr. Davis
19 getting out of the case at this point and attending to his
20 medical condition.

21 **THE COURT:** Sure. Thank you.

22 Ms. Amato.

23 **MS. AMATO:** Yes, on behalf of Mr. Anderson, likewise,
24 we obviously don't object to Mr. Davis leaving the case at this
25 point.

1 My client also asks to join in the motion for mistrial
2 as well.

3 **THE COURT:** Mr. Hazlehurst.

4 **MR. HAZLEHURST:** Yes, Your Honor, on behalf of
5 Mr. Davis, we have discussed the matter. Mr. Davis has no
6 objection to the course suggested by Mr. Davis on behalf of
7 Mr. Frazier. He has not asked to join the mistrial motion.

8 **THE COURT:** Okay. Thank you.

9 Government counsel.

10 **MS. HOFFMAN:** Yes. There is abundant Fourth Circuit
11 case law in a similar context holding that when there is a
12 multi-defendant trial and one or more of the defendants plead
13 midway through trial and are no longer seated at the trial
14 table, that that is not grounds for a mistrial.

15 Usually in that circumstance, the judge, I think, will
16 give some kind of instruction that the jury should not pay any
17 mind to the fact that a particular defendant or defendants is
18 no longer at the trial table.

19 And the Fourth Circuit in those circumstances has said
20 that there's no grounds for a mistrial or that it's not an
21 abuse of discretion to continue with the trial without granting
22 a mistrial to the other defendants.

23 I have a number of Fourth Circuit cases here that I
24 can cite for the record. I'm not sure if Your Honor has taken
25 a look at them.

1 There's -- the first one is United States versus
2 Johnson. This is 451 F.2d 1321. It's a Fourth Circuit case
3 from 1971. Certiorari was denied by the Supreme Court.

4 And the Court there or the defendant there complained
5 that his motion for a mistrial should have been granted after
6 other defendants changed their pleas during the trial, and the
7 Fourth Circuit held that the Court's instructions to the jury
8 about the unexpected occurrence fully protected the defendant.
9 We find no abuse of discretion in the denial of the motion.

10 And then there are other Fourth Circuit cases like
11 that, United States versus Herrera, 832 F.2d 833. That's a
12 Fourth Circuit case from 1987. And the Court specifically held
13 [reading]: A defendant's motion for a mistrial after a
14 co-defendant pleads guilty during a joint trial is a matter
15 addressed to the sound discretion of the District Court.

16 In United States versus Chen -- this is 131 F.3d 375,
17 the Fourth Circuit held basically the same thing. And in that
18 case, actually, multiple defendants pled guilty mid trial and
19 then testified against the other defendants. And it was still
20 affirmed on appeal.

21 I think that with respect to Mr. Sardelli's points
22 about evidence that may not have come in if not for
23 Sydni Frazier being part of this trial, I think we are prepared
24 to agree that the post-Miranda statement is admissible only
25 against Mr. Frazier. And the jury should be instructed that

1 that statement not be used against any of the other defendants.

2 However, as I'm sure Your Honor recalls, he did not
3 implicate any other defendants in that statement. It was
4 essentially a series of false exculpatories and nothing more.

5 As for the murder itself, there has been an abundance
6 of evidence that Sydni Frazier committed the murder of
7 Ricardo Johnson in furtherance of the racketeering conspiracy
8 charged in Count 1.

9 There's been evidence from a number -- testimony from
10 a number of cooperating witnesses that Mr. Frazier was a
11 5200 boy who operated in concert with other members of MMP.

12 There was testimony by William Banks, a/k/a Trouble,
13 that he learned from Dwight Jenkins, also known as Huggie, that
14 Ricardo Johnson got killed and set on fire in a car out
15 South Baltimore somewhere because he was a rat and it came from
16 Gutta.

17 There was testimony from Jay Greer that Mr. Greer
18 encountered Sydni Frazier in the Chesapeake Detention Facility
19 after Frazier had been charged with the murder.

20 Mr. Greer testified that Frazier explained to him that
21 Gutta wanted Rick to be killed. And he sent M-Easy to go kill
22 him, but M-Easy didn't finish the job.

23 And when asked whether Mr. Frazier said anything about
24 why Gutta wanted Rick killed, Mr. Greer testified that Syd had
25 told him that it was because Gutta believed he was cooperating

1 with law enforcement.

2 And then, finally, we have most recently the testimony
3 of Malcolm Lashley, who testified that before Ricardo Johnson's
4 murder, he had a conversation with Syd and other members of MMP
5 in which Syd said he wanted to kidnap and rob Ricardo Johnson
6 because he was known to have a lot of drugs.

7 And shortly after the murder, he testified that he
8 heard Syd say that he had gotten him, referring to
9 Ricardo Johnson, and that he had an unusually large quantity of
10 heroin, a large bag, that he was giving out to other members of
11 MMP and 5200 boys in that area.

12 So we do believe that there has been quite a bit of
13 evidence that this murder was in furtherance of the conspiracy;
14 that there's no prejudice to the other defendants, so that this
15 testimony and evidence would have come in regardless, just as
16 the testimony and evidence regarding the Nutty B murder,
17 although Co-Defendant Dontray Johnson is not seated here today.

18 **THE COURT:** Okay. All right. Well, let me take up
19 the first issue as far as the mistrial.

20 There are some cases that counsel and I have talked
21 about some alternatives.

22 But there is a Fourth Circuit case that is very
23 clearly on point to this unfortunate situation, which is
24 United States versus Von Spivey, S-P-I-V-E-Y, at 895 F.2d 176,
25 which also was a situation of a multi-defendant case where one

1 defendant's counsel's illness precluded that person from
2 continuing, and there simply were no other options. Things
3 were discussed, but there were no other available options.

4 And that appears to me the situation that we have
5 here. It's a matter of manifest necessity. It would not
6 preclude a retrial down the road. But at least at this point,
7 it does require a severance and mistrial as to Mr. Frazier.

8 I appreciate that Mr. Frazier would eventually like to
9 continue with Mr. Davis, if that is possible, and I
10 certainly -- I hope it will be.

11 But at this point, given what Mr. Davis -- the
12 position Mr. Davis and Mr. Frazier have taken and the
13 Von Spivey case, I think that's -- there's really no option
14 other than, of necessity, declaring a mistrial and severance as
15 to Mr. Frazier.

16 Just for the record, there were some conversations
17 about appointing substitute counsel, but there was a pretty
18 general agreement, I think.

19 And I would certainly believe that, given the
20 complexity of this case, the volume of discovery, the length of
21 time involved, the issues of credibility with cooperators, it
22 would be unreasonable and not in Mr. Frazier's interest to even
23 attempt to put in substitute counsel at this point. So that's
24 not really an option.

25 So I am declaring a mistrial as to Mr. Frazier and

1 will sever him and see what develops down the road.

2 As far as a mistrial for the other defendants who have
3 requested one, I'm going to deny that.

4 I think the record is clear that most of the evidence
5 admitted against Mr. Frazier would have been admissible even if
6 he were not here during the case.

7 The acts taken relating to drug dealing and the most
8 significant, the alleged murder of Ricardo Johnson, are
9 certainly both charged to be and, according to the evidence,
10 could be interpreted to be part of the conspiracy, the overall
11 conspiracy charged against all the defendants.

12 Again, the Government's position and there's evidence,
13 if accepted by the jury, that Mr. Bailey was involved in
14 causing this to happen.

15 In any event, again, the evidence, with the possible
16 exception of the postarrest statement by Mr. Frazier, likely
17 would have been admissible anyway.

18 And this is not a 403 sort of situation where there's
19 only one murder charged that might not have come in. There are
20 a number of other murders and violent acts alleged and that the
21 jury has heard testimony about.

22 So we certainly can instruct the jury to disregard
23 Mr. Frazier's statement. And it would also be my plan, as the
24 Government has indicated -- and it's happened in other cases.
25 There are reasons why a defendant may leave, may stop

1 participating in the course of a trial, frequently a guilty
2 plea.

3 And what is normally done, which I would propose to do
4 here, is simply to instruct the jury that for reasons that do
5 not concern them and should not be considered in any way in
6 reaching their verdict as to the other defendants, Mr. Frazier
7 and his counsel are not continuing at this time, something to
8 that effect.

9 I'm certainly happy to consider any specific language
10 anyone would want me to consider. But that would be my
11 instruction as well as to disregard Mr. Frazier's statement.

12 And if counsel believe that there is some other piece
13 of evidence other than that postarrest statement that properly
14 came in only against Mr. Frazier that you want me to ask the
15 jury to disregard, you can let me know what that is by tomorrow
16 morning when we resume with the jury.

17 All right. Anything else at this point?

18 (No response.)

19 **THE COURT:** All right. Other than, obviously, wishing
20 Mr. Davis the best on Thursday, I appreciate it.

21 Okay. Thank you, all. I'll see you tomorrow morning
22 at 10:00, but not Mr. Frazier and Mr. Davis.

23 **MS. HOFFMAN:** I'm sorry, Your Honor.

24 I did remember, since we are nearing the end of our
25 case -- and I saw that Your Honor ruled on the motion to

1 exclude the ASAP GPS records.

2 But there are a couple of other outstanding motions in
3 limine that we should probably resolve, perhaps tomorrow
4 morning, even, before we rest our case. And --

5 **THE COURT:** Sure. What is your likely schedule? And
6 tell me what -- what they are.

7 **MS. HOFFMAN:** We are now -- we are now thinking it
8 will probably be Wednesday --

9 **THE COURT:** Wednesday. Sure.

10 **MS. HOFFMAN:** -- when we rest our case.

11 So one of the motions that's still outstanding is the
12 motion -- is the Government's motion to admit Dante Bailey's
13 2006 jail mail, and that was --

14 **THE COURT:** I have recently reviewed that. I'm
15 inclined not to let it in.

16 If there's anything else you want to say.

17 **MS. HOFFMAN:** I think we're prepared to rest on the
18 briefs. I think Your Honor has heard the evidence regarding
19 the Anthony Hornes murder.

20 And, of course, we argue in the brief the similarity
21 between the way in which that murder occurred and some of the
22 admissions made in that 2006 jail mail.

23 But I think we're prepared to rest on the briefs.

24 **THE COURT:** Okay. All right. Well, I think -- I
25 mean, I think calling them admissions to something that hadn't

1 happened yet might be a bit much.

2 But I think 2006 is too far in advance of the
3 conspiracy.

4 I think portions of what's in those letters would be
5 unfairly prejudicial to Mr. Bailey and possibly to other
6 defendants. Frankly, I think it's cumulative.

7 There is plenty of writings that have come in relating
8 to, allegedly, the structure of Murdaland Mafia Piru and its
9 organization in a much more recent time frame without the need
10 of going back to 2006. So I was going to not admit the 2006
11 jail mail.

12 Anything else?

13 **MS. HOFFMAN:** There is also -- and I'm sorry. I'm
14 just looking through what I've printed out here.

15 There was a motion to preclude a number of things
16 filed by Dante Bailey's counsel before trial started, and that
17 was ECF-1043.

18 And one of the things that Dante Bailey moved to
19 preclude was the hit letter against Jay Greer, Champagne,
20 which, of course, Your Honor ruled previously should come in.

21 I believe, if I recall correctly, the Court reserved
22 ruling on some other language in those letters that -- in which
23 Dante Bailey stated, I have a reputation for getting people
24 killed and complained about rat "N" words in the jail.

25 Ms. Whalen argued that it should not be let in, more

1 prejudicial than probative.

2 And what we argued is that it's necessary context for
3 that hit letter, that we assume that Mr. Bailey is going to
4 argue that that wasn't actually a hit letter, that "pop a
5 bottle of champagne" could have any number of meanings. He
6 wasn't actually trying to get Champagne killed.

7 And so we think that that language in the same series
8 of letters saying, "I have a reputation for getting people
9 killed," is relevant information that the jury should have
10 before it when interpreting that hit letter.

11 And so that is -- it's likely -- the witness who will
12 testify about those documents will likely testify tomorrow
13 afternoon.

14 And so if we could perhaps have a ruling on it before
15 then, that would be helpful.

16 **THE COURT:** Okay. Anything you want to add?

17 **MS. WHALEN:** I'd like to review the motion,
18 Your Honor.

19 **THE COURT:** Okay. I will do that as well.

20 Okay. Thank you for pointing that out.

21 Anything else that we should --

22 **MS. HOFFMAN:** The only additional outstanding motion,
23 I think, is the recent mid-trial motion by Dante Bailey,
24 ECF-1085, to preclude additional social media and autopsy
25 photographic evidence.

1 I think the autopsy photographs, I think that issue is
2 moot by now. We've culled them down.

3 We do intend to present additional social media
4 evidence. Our position is that the motion basically makes a
5 blanket claim that all that should be precluded because it's
6 cumulative.

7 We think that it's not cumulative. There is
8 additional relevant probative evidence in the social media
9 accounts and the iCloud accounts.

10 I think that if the defendant has a specific objection
11 to something for a specific reason, then we're happy to
12 consider that and consider appropriate redactions, but but for
13 that, that the evidence should be let in and the jury should
14 see it.

15 **THE COURT:** Yes. I think we've had some
16 conversations. It's been hard to rule on in a vacuum. I
17 think -- I mean, I agree with the general principle that we
18 don't need more of the same.

19 And you have so far, with additional social media,
20 said, Well, it shows this new person that wasn't in there
21 before. Or there seemed to be something that distinguished it.

22 And I think that's what we need to have, that it's not
23 just more of the same, that you can articulate some specific
24 additional evidentiary point to that particular video or
25 picture or whatever it might be and then it's admissible.

1 **MS. WHALEN:** And, Your Honor, to that end, we received
2 last -- sometime -- I received it last night, additional social
3 media that possibly was coming in today and/or tomorrow.

4 And I sent an e-mail to the Government sort of
5 flagging: These are things that I'm having trouble with
6 relevancy and/or could you explain.

7 And we haven't talked since then.

8 So maybe we can resolve that. And I will have
9 specific items that I would like to address, if they still want
10 to bring them in.

11 **THE COURT:** Okay. That's fine.

12 **MS. AMATO:** Your Honor, sort of following on that, I
13 too have some objections to some of the material that they've
14 flagged for us over the weekend.

15 In particular, there's a phone call that -- in that
16 phone call, Mr. Bailey and his wife were identified, but there
17 was an unknown male who had not been identified.

18 And over, I guess, yesterday I received an e-mail that
19 the Government now is claiming that that unidentified male is
20 my client.

21 And so I'm objecting -- first of all, I mean, at this
22 point it's a little bit late for me to put on a defense to
23 that. I mean, I've done a little bit of investigation, and I
24 will say it's not my client. So I really -- you know, that's
25 number one.

1 Number two, I do know who it is. But for me to be
2 able to put on a defense as to who that person is is going to
3 be very difficult for me, so I'm asking the Government to not
4 identify that voice.

5 **THE COURT:** Okay.

6 **MS. HOFFMAN:** So, Your Honor, the call has already
7 come into evidence. And Agent Aanonsen -- there was a division
8 of labor between the two case agents as to jail calls versus
9 wire calls.

10 Agent Aanonsen had not heard that jail call when it
11 was first played in court. It was Agent Moore who had reviewed
12 it.

13 When Agent Aanonsen heard it, he recognized the voice
14 to be that of Corloyd Anderson. He's familiar with
15 Corloyd Anderson's voice based on listening to many wire calls,
16 but also an in-person interview.

17 And so we certainly do believe that his identification
18 of the speaker in that call -- this is the call in which
19 there's a lot of back-and-forth between Dante Bailey and his
20 wife about an inventory. They use the word "hair," and they're
21 discussing at length calculations of how much is owed to them
22 for what. And then a third party joins the call.

23 And Agent Aanonsen does recognize that voice to be
24 Mr. Anderson's, and it's certainly relevant evidence of his
25 involvement in the drug-trafficking conspiracy. And so it's

1 hard to see what the -- I mean, the evidence has already come
2 in, and it's simply the voice identification.

3 **THE COURT:** Well, that's kind of a big part of the
4 evidence. I mean, the call is in, but it has an unidentified
5 male; right?

6 That's -- and when did you tell Ms. Amato about this
7 voice identification?

8 **MS. HOFFMAN:** So Agent Aanonsen went back and reviewed
9 it yesterday and compared it to other calls and confirmed that
10 he did believe it was Corloyd Anderson, and we then notified
11 Ms. Amato.

12 **MS. AMATO:** Yesterday. And, Your Honor, also, just to
13 be clear, the third voice is heard in the background speaking,
14 I guess, to Mr. Bailey.

15 But it's not like you can really hear him as if he's
16 specifically on the call. So it's very difficult to really
17 hear -- I mean, to me -- who that person is.

18 But it's my understanding it's not my client, that
19 it's Gambino. It's Dontray Johnson.

20 So -- but I don't know how at this point I'm going to
21 be able to defend that. It's just too late, Your Honor. It's
22 just too late.

23 **THE COURT:** I agree. It's too late. I mean, defense
24 counsel make reasonable decisions based on what they think the
25 evidence is, and this is just too late to have that

1 identification come in.

2 Anything else?

3 **MR. SARDELLI:** Your Honor, in the same vein,
4 Your Honor, I flagged one call, and the Government knows this.
5 It's the only call they claim is to or from my client based on
6 relevance, Your Honor, and I believe the call has to do with
7 talking about the night before being out at a club or
8 somewhere.

9 I don't believe it's relevant, Your Honor, so I
10 flagged that issue. I'm not sure if they want to discuss it
11 now or when it ever is going to come in, Your Honor. It has
12 not been discussed yet during the trial.

13 **THE COURT:** Okay. So this is not an identification or
14 a notice or anything. It's just relevance.

15 **MR. SARDELLI:** It's a relevance objection, Your Honor,
16 yes.

17 **MS. HOFFMAN:** And it is a wire call between
18 Adrian Jamal Spence and Randy Banks in the summer of 2015.
19 It's certainly relevant to show Mr. Banks' association with
20 Spence, or Spittle.

21 And they also refer to Fish in the call, who's another
22 co-conspirator who's been mentioned during this trial.

23 So we do think it's relevant to show associations with
24 the co-conspirators in the case, and there's certainly nothing
25 prejudicial in it. And the defendant has had plenty of notice

1 about this call.

2 **THE COURT:** Anybody by any chance know the transcript
3 page for the wire call?

4 **MS. HOFFMAN:** I believe it's 4104 -- B-4104. That's
5 just off the top of my head. Yes, B-4104.

6 **THE COURT:** I'm sorry. Say it again.

7 **MS. HOFFMAN:** It's B-4104, which --

8 **THE COURT:** Are they in any kind of order?

9 **MS. PERRY:** Page 317, Your Honor.

10 **THE COURT:** Oh, thank you.

11 Okay. Right. So it's between Mr. Banks and
12 Mr. Spence. I'm seeing that towards the end, Mr. Spence asks
13 Mr. Banks [reading]: What time are you coming out?

14 Mr. Banks says he's ready to come out right now.

15 Mr. Spence says [reading]: All right. I'll see you
16 around the way.

17 And Mr. Banks says [reading]: All right.

18 That's the call?

19 **MR. SARDELLI:** Yes, Your Honor. It's the call here,
20 and they're talking at the end -- you see at the end on Page 2
21 they talk about [reading]: Yeah, that "N" word Fish was having
22 a little drunk episode and S word.

23 Your Honor, I won't say it here.

24 **THE COURT:** Sure.

25 **MR. SARDELLI:** Apparently the night before there was a

1 party at a club called Paparazzi. In fact, I think one of the
2 exhibits they put on earlier, Your Honor (indicating), about a
3 party that happened the night before.

4 And this call -- and I've looked at it and I've looked
5 into it several times, Your Honor. It clearly seems to me
6 about -- a bunch of guys talking about a night out the night
7 before at Paparazzi, for example, here, Your Honor. This is
8 about the guys talking about a night of drinking the night
9 before.

10 And I'm having a hard time understanding the
11 relevance. There's no alleged drug words or anything else,
12 Your Honor, so --

13 **THE COURT:** Okay. It shows a connection between
14 Mr. Spence and Mr. Banks. And, again, to me, the ending
15 portion of that call, regardless of what was being discussed
16 about the party the night before, the ending part of the call
17 could certainly be interpreted as some drug-related
18 conversation between Mr. Spence and Mr. Banks.

19 So I think it is sufficiently relevant, and I don't
20 see anything particularly prejudicial about it. So if the
21 Government is choosing to get into that, it's fine.

22 Anything else?

23 **MS. AMATO:** Yes, Your Honor. This pertains to the
24 social media. There are three small video clips. I can't
25 recall the numbers right now. But they basically are of my

1 client in Vegas driving in a vehicle, and one of the video
2 clips shows him with two people that have nothing to do with
3 this case.

4 And so, Your Honor, I'm asking that those snippets not
5 be introduced. They're not relevant to the charges in this
6 case.

7 **MS. HOFFMAN:** I believe the exhibit numbers are --
8 and, Ms. Amato, correct me if I'm wrong -- but I think it's
9 IC-129, 130, 131. They are very short video clips that show
10 Corloyd Anderson driving around in a Bentley with diamond
11 chains around his neck.

12 He's also speaking in the videos. So, actually, a
13 large part of why we want to play them is that it shows
14 Corloyd Anderson speaking, and it will help the jury recognize
15 Corloyd Anderson's voice in the wire calls.

16 We also think that they're relevant to show
17 unexplained wealth.

18 He's driving around in a very expensive car with
19 expensive diamond jewelry around his neck, and we will also be
20 putting on evidence of other unexplained wealth to show that
21 Corloyd Anderson was making money through the trafficking of
22 narcotics.

23 **THE COURT:** Okay.

24 **MS. AMATO:** I mean, Your Honor, I don't know what
25 evidence the Government has that that's actual real diamond

1 jewelry that he's wearing.

2 And I think they can just show maybe -- they don't
3 have to show all of them, but to -- for them to present his
4 voice in a different format.

5 **THE COURT:** Okay. I'll overrule the objection to the
6 three videos. I think both the voice and the apparent
7 possession, at least, of expensive items is relevant to prove
8 the Government's case.

9 Anything else?

10 (No response.)

11 **THE COURT:** Okay. So you are now thinking tomorrow we
12 have a full day and part of a day on Wednesday?

13 **MS. HOFFMAN:** And part of the day on Wednesday.

14 **THE COURT:** Okay. Defense counsel, will you be
15 prepared to call witnesses on Wednesday?

16 **MS. WHALEN:** Your Honor, all along we have been, or at
17 least for Mr. Bailey, we have been guessing much later of
18 course, but then we were guessing Monday.

19 And so I will be prepared to do what we are going to
20 do on Monday.

21 I will tell the Court that we are requesting writs for
22 two individuals, and I was going to put Monday on that time
23 frame as well.

24 **THE COURT:** Monday. Okay.

25 Mr. Sardelli.

1 **MR. SARDELLI:** Your Honor, if we have everything --
2 I'm still discussing it with my client -- we would also request
3 Monday, Your Honor, if I have anything.

4 **MR. TRAINOR:** Your Honor, I join in that request on
5 behalf of Mr. Lockley. I'm not sure whether we would be
6 calling a witness at this point.

7 **THE COURT:** Okay.

8 **MS. AMATO:** So, Your Honor, I will have two
9 stipulations with exhibits, basically, that I can introduce --
10 I mean, I can introduce those on Wednesday or whenever. That's
11 not an issue.

12 And I may or may not have a witness at this point.

13 **THE COURT:** All right. And, Mr. Hazlehurst?

14 **MR. HAZLEHURST:** Your Honor, at this point I will just
15 join on the request as to Monday.

16 We may have some ability to do it more quickly than
17 that, and I'll work on that if I can.

18 **THE COURT:** Okay. All right. Well, I think that
19 that's not unreasonable. It would have been through Thursday
20 this week anyway.

21 If we finish up sometime on Wednesday, I'm sure we'll
22 have some -- we can talk about instructions and verdict sheet
23 at some reasonable point.

24 And I'll assume that counsel and clients, you choose
25 to call witnesses or present evidence, we'll be ready to do

1 that Monday, possibly getting the stipulations and exhibits on
2 the record as to Mr. Anderson, depending on how things -- what
3 the timing is on Wednesday.

4 It may also be that we just finish in the morning, and
5 I can excuse the jury until next week.

6 **MS. HOFFMAN:** And we would ask -- we were given
7 witness lists by some of the defendants prior to trial. We
8 would at this point ask for updated witness lists from the
9 defendants who plan to call witnesses and notice of what, if
10 any, exhibits they intend to use.

11 **THE COURT:** All right. They should be provided
12 reasonably in advance of Monday. We can talk about that
13 further.

14 All right. Anything else?

15 (No response.)

16 **THE COURT:** I will say, if you all could take a look
17 at the jury instructions, what I had gotten was a set of joint
18 jury instructions.

19 **MS. HOFFMAN:** Oh, I'm sorry. That is mislabeled as
20 joint. It's not joint. It's the Government's proposed jury
21 instructions.

22 **THE COURT:** Have I -- then do I have opposition
23 from -- and if I don't yet, that's fine. I just need to know
24 if there are going to be objections to any specific
25 instructions or additional instructions that someone might

request, if you can let me know as soon as possible.

Okay. Thank you, all.

And we'll adjourn for today.

(Court adjourned at 3:43 p.m.)

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I, Douglas J. Zweizig, RDR, CRR, FCRR, do hereby certify that the foregoing is a correct transcript from the stenographic record of proceedings in the above-entitled matter.

/s/

Douglas J. Zweizig, RDR, CRR, FCRR
Registered Diplomat Reporter
Certified Realtime Reporter
Federal Official Court Reporter
DATE: November 14, 2019

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